

expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

**7.2.1.5** Notwithstanding the work to be performed pursuant to this Section Concessionaire shall begin paying rent on the Commencement Date, and Concessionaire must document any and all costs of Concessionaire Improvements made to the Premises subsequent to the Commencement Date. The documentation must be in a form and detail satisfactory to the Aviation General Manager, and must be submitted for review and approval within thirty (30) calendar days following completion of the work, for the purpose of establishing the unamortized costs of improvements to be reimbursed to Concessionaire in the event of termination for convenience by the City.

**7.2.2** Base Building Improvements. Concessionaire shall pay all costs for required modifications and/or construction of certain base building conditions necessary to bring the base building concession spaces to a condition ready to receive Concessionaire Space Improvements. Improvements shall include but not be limited to the following: demolition of existing storefronts and finishes and removal of debris, construction or relocation of demising partitions, construction of servicing/delivery corridors or other support spaces, and extension or modification of building systems or other work. In locations in which construction of service corridors will be necessary to improve operations at the Airport, the required corridors shall be constructed by the Concessionaire.

**7.2.3** Minimum Reinvestment. As provided in the Section entitled "Renewals," this Agreement shall be subject to a single three (3) year renewal at the option of the City. If the renewal option is exercised, the City will notify the Concessionaire of its intention to renew within thirty (30) days of the end of the 5th anniversary of the Commencement Date. In such case, Concessionaire will be required to refurbish the public areas of the Premises at a minimum cost of \$150.00 (One Hundred Fifty U.S. Dollars) per square foot within one hundred and twenty (120) days of the execution of the Renewal or within such longer time period as may be approved by the Aviation General Manager. In the event this Agreement is not renewed, Concessionaire will be required to refurbish the public areas of their Premises at a minimum investment of \$100.00 (One Hundred U.S. Dollars) per square foot by the earlier occurring of: (1.) One hundred and fifty (150) days after the 5th anniversary of the Commencement Date; or (2.) One hundred and twenty (120) days from the date the City notifies Concessionaire in writing that the Agreement will not be renewed. If the City disputes the amount of reinvestment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the reinvestment. If the independent appraiser determines that the reinvestment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

**7.2.4 Liquidated Damages.** Failure by Concessionaire to complete the construction in the timeframe as outlined in section 7.2.1.3 as required during the term and the renewal shall result in the payment of liquidated damages of \$1,000.00 (One Thousand U.S. Dollars) per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the damage incurred by the City for such delay. Failure by the Concessionaire to complete the construction in the timeframe as outlined in section 7.2.3 as required during the renewal shall result in the payment of liquidated damages of \$1,000.00 (One Thousand U.S. Dollars) per location per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the damage incurred by the City for such delay.

### **7.3 Construction of Concessionaire Improvements.**

**7.3.1** Concessionaire must, at its sole cost and expense, design, erect, construct and install all of the following ("Concessionaire Improvements"): fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, and all other improvements for the operation of business within the Premises pursuant to this Agreement.

**7.3.2** Concessionaire must perform all demolition required and construct and install all Concessionaire Improvements at its own expense and shall hire contractors that are acceptable to City. Prior to the commencement of any construction work, Concessionaire must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Concessionaire must provide to City, a payment and performance bond in an amount equal to one hundred percent (100%) of the total contract value of such contract. Concessionaire must also comply with all other requirements of **EXHIBIT D**.

**7.3.3** City's sole responsibility with regard to improvements within the Premises shall be to deliver the Premises to Concessionaire in the condition set forth in the Airport Design Criteria. Concessionaire may not undertake any work within or about the Premises unless City, pursuant to the Airport Design Criteria, approves such work. Prior to the commencement of any work, Concessionaire must confirm to the Aviation General Manager in writing that: (1) Concessionaire accepts the Premises for the intended uses; and (2) the Premises are in the condition set forth in the Airport Design Criteria.

**7.3.4** All aspects of the build-out must comply with Exhibit C, Exhibit D and Exhibit E attached hereto and incorporated herein.

### **7.4 Utilities.**

**7.4.1** Utility Connections. The City will provide the source for certain utility connections for the concession spaces as specified in the Airport Design Criteria. Generally, electrical service will be provided to each concession's rear or side demising wall and

stubbed off. Connection and distribution throughout the concession space shall be at the Concessionaire's expense. All utilities to the concession space will be separately metered.

**7.4.2** Concessionaire must pay the whole cost for all utility services as invoiced to Concessionaire by the Airport or its designee and for such other special services which it may require in the Premises, and Concessionaire expressly waives the right to contest any utility rates; provided that Concessionaire will not be charged for the supply of heat, ventilation, and air conditioning for the Premises, except as may be otherwise required as referenced below.

**7.4.3** Heating, Ventilation and Air Conditioning ("HVAC"). The City will provide the base system for HVAC. However, Concessionaire will be required to install separate equipment for HVAC requirements specifically related to Concessionaire's operations. In such event, Concessionaire will pay for utility usage in the concession spaces for HVAC requirements. Concessionaire will pay for all utilities without exception necessary in the operation of its business including telephone, electricity, water, sewage, gas and other fuels. All charges including but not limited to deposits and all service charges for utility services metered directly to the concession space must be paid by Concessionaire, regardless of whether such utility services are furnished by the City or other utility service corporations.

**7.5 Waiver of Damages.** Concessionaire expressly waives all claims for damages arising out of or resulting from failures or interruptions of utility services furnished by City including, but not limited to, electricity, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences.

**7.6 Maintenance and Repair.** Concessionaire agrees, at its own expense, to keep the Premises and all Concessionaire Improvements in good repair and in a clean, neat, safe and sanitary condition and in good order at all times. If it becomes reasonably necessary during the Term of this Agreement, as determined by the Aviation General Manager, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Additionally, Concessionaire shall pay its pro rata share of Airport Operations and Maintenance ("O&M") costs to be billed monthly by the City or its designee.

**7.6.1 Janitorial Service.** Concessionaire will provide sufficient janitorial services to ensure that the Premises is at all times maintained in a clean attractive and sanitary manner including, but not limited to, equipment, utensils, fixtures, service counters and display units.

**7.6.2 Pest Control.** Concessionaire is required to use the pest-exterminating contractor engaged by the Airport to implement a comprehensive, ongoing pest control program. Concessionaire is required to provide the City with reports indicating compliance

with pest control standards, in such a form as the Aviation General Manager may dictate and shall be required to maintain manifest reports on file at each store, at all times.

**7.7 Advertising.** Concessionaire may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of the Aviation General Manager as to the number, size, height, location, color and the general type and design. Such approval shall be subject to revocation by the Aviation General Manager at any time. Without express written consent of the Aviation General Manager, Concessionaire may not display any advertising, promotional or informational pamphlets, circulars, brochures or similar materials.

## **8. LIABILITY AND INDEMNITY**

**8.1 City's Liabilities.** City will not be liable or responsible to Concessionaire for any loss, damage or expense that Concessionaire may sustain or incur if either the quantity or character of any services to be provided by City is changed or is no longer available or is no longer suitable for Concessionaire's requirements. City will not be liable or responsible to Concessionaire for any loss, damage or expense arising out of, resulting from, relating to or concerning, directly or indirectly, acts of terrorism, including, but not limited to, any loss, damage or expense sustained or incurred by Concessionaire as a result of:

**8.1.1** a change in the Airport's or Concessionaire's business resulting from such terrorist acts;

**8.1.2** the enactment of laws responding to or concerning such terrorist acts; or

**8.1.3** any other detrimental effect upon Concessionaire or its business resulting from such terrorist acts.

**8.2 Indemnity and Hold Harmless.** Concessionaire agrees to defend, indemnify and hold harmless City, including, but not limited to, its officers, agents, officials and employees (collectively, "Indemnified Parties") from and against:

**8.2.1** any liability for injuries to or deaths of persons or damage to property arising from Concessionaire's activities under this Agreement or in or about the Premises; and

**8.2.2** any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to the negligence or willful misconduct of Concessionaire or any other individual or entity under Concessionaire's control (contractual or otherwise) and their officers, agents or employees; and

**8.2.3** any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to any liens or charges

of any kind that may at any time be established against the Premises or this Agreement, or any part of it, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Agreement; and

**8.2.4** any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to Concessionaire's violation or alleged violation of the Section entitled "Hazardous Materials." This indemnification obligation includes, but is not limited to fines assessed against Concessionaire, City, or others for whom City may be responsible, diminution in value of the Airport, damages for the loss of use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees which arise during or after the Term of this Agreement, including any renewals, as a result of such violation. This indemnification of City by Concessionaire also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a violation; and

**8.2.5** any loss, claim, damage, action or suit alleging that any good and/or service sold by Concessionaire infringes upon one or more United States Patents, copyrights or trademarks owned by anyone other than Concessionaire, or violates any provision of the Lanham Act.

**8.3 Indemnity Not Limited by Applicable Insurance.** Concessionaire further agrees that this agreement to indemnify and hold harmless the Indemnified Parties will not be limited to the limits or terms of the liability insurance, if any, required under this Agreement.

**8.4 Survival.** This Section entitled "Indemnity and Hold Harmless" shall survive any cancellation, termination or expiration of this Agreement.

**9. INSURANCE AND BONDING.** Concessionaire must comply with all insurance and bonding requirements set forth in EXHIBIT D.

## **10. DAMAGE OR DESTRUCTION**

### **10.1 Partial Destruction of the Premises.**

**10.1.1 Insured Damage.** If the Premises is damaged by any casualty which is insurable and insured under an insurance policy of the type required to be maintained by Concessionaire pursuant to this Agreement, regardless of whether the Premises is tenantable or practically usable for the purpose for which it was formerly used, then Concessionaire must repair such damage as soon as reasonably possible and this Agreement will continue in full force and effect.

**10.1.2 Uninsured Damage.** If the Premises is damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is not caused by an act or omission of Concessionaire, its agents, servants or employees, then City's options are, either:

**10.1.2.1** repair such damage as soon as reasonably possible at City's expense, in which event this Agreement will continue in full force and effect; or

**10.1.2.2** give written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage of City's intention to terminate this Agreement effective as of the date of the occurrence of the damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City's notice to notify, City in writing of Concessionaire's intention to repair such damage. If Concessionaire fails to repair the damage to City's satisfaction within a reasonable period of time, this Agreement will automatically terminate effective as of the date of the occurrence of such damage.

**10.1.3** In no event shall City be required to repair any injury or damage of fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Concessionaire or at the direct or indirect expense of Concessionaire. Concessionaire must restore or replace the same in the event of damage provided that this Agreement is not terminated pursuant to this Section.

**10.1.4** If the Premises is damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is caused by an act or omission of Concessionaire, its agents, servants or employees, then Concessionaire must repair the damage to the City's satisfaction within a reasonable period of time, in which event this Agreement will continue in full force and effect.

**10.2 Total Destruction of Premises.** If the Premises is totally destroyed during the Term of this Agreement, including any renewals, from any cause whether or not covered by the insurance required under this Agreement (including any destruction required by any authorized public authority), this Agreement will automatically terminate, effective as of the date of such total destruction.

**10.3 Partial Destruction of the Central Passenger Terminal Complex.** If fifty percent (50%) or more of the building in which the Premises is located shall be damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of the building in which the Premises are located is damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected, the City may, but shall not be obligated to, cancel or terminate this Agreement within ninety (90) days from the date of occurrence of such damage or

destruction. If the City elects to terminate this Agreement within such ninety (90) day from the date of occurrence of such damage or destruction in which event the Term of this Agreement shall expire immediately and Tenant shall thereupon surrender the Premises to the City

**10.4 Damage during Last Year of Term or Renewal Period.** If during the last year of the Term, including any renewal term, the Premises are partially destroyed or damaged and are not covered under an insurance policy required to be maintained pursuant to this Agreement, City may terminate this Agreement, effective as of the date of occurrence of such damage, by giving written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City notice, to notify City in writing of Concessionaire's intention to repair such damage at Concessionaire's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect and Concessionaire must proceed to make such repairs as soon as reasonably possible.

#### **10.5 Reduction of Rent; Concessionaire's Remedies.**

**10.5.1** If the Premises are partially destroyed or damaged physically and the City is obligated to repair the Premises pursuant to this Agreement, the rent attributable to such partially destroyed or damaged Premises and payable for the period during which such damage and repair continues will be reduced in proportion to the extent to which Concessionaire's use of the Premises is impaired, calculated on a square foot basis, in accordance with the discretion and determinations of the Aviation General Manager. For example, if one-half (1/2) of the Premises is unusable by Concessionaire as a result of such physical damage or destruction, then the rent payable for each month during which it exists and is being repaired will be reduced by one-half (1/2). Except for a reduction rent (if any), Concessionaire shall have no claim against the City for any damage suffered by reason of any such damage, destruction or repair.

**10.5.2** If the City shall be obligated to repair the Premises under this Section and shall not commence such repair or restoration within forty-five (45) days after such obligation shall accrue, Concessionaire at Concessionaire's option may cancel and terminate this Agreement by written notice to the City at any time prior to the commencement of such repair. In such event this Agreement shall terminate as of the date of such notice.

### **11. DEFAULT BY TENANT**

**11.1 Events of Default.** Concessionaire will be in default under this Agreement if:

**11.1.1** Concessionaire fails to pay rent or any other payment required under this Agreement when due to City, and that failure continues for a period of thirty (30) days after

such rent or other payment is due whether or not the City has invoiced or provided Concessionaire with notice of any amount due or overdue; or

**11.1.2 Concessionaire does any of the following:**

**11.1.2.1** becomes insolvent, or seeks the benefit of any present or future insolvency statute.

**11.1.2.2** makes a general assignment for the benefit of creditors.

**11.1.2.3** files a voluntary petition in bankruptcy.

**11.1.2.4** Files a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any other State.

**11.1.2.5** consents to the appointment of a receiver, trustee, or liquidator of any of its property.

**11.1.2.6** files a petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, is involuntarily filed against Concessionaire and not dismissed within sixty (60) days after the filing.

**11.1.2.7** transfers its interest under this Agreement, without the prior written approval of City, by reason of death, operation of law, assignment, sublease agreement or otherwise, to any other person, firm or corporation.

**11.1.2.8** abandons, deserts or vacates the Premises, including, but not limited to, ceasing to provide its services at the Premises for thirty (30) days or more.

**11.1.2.9** files any lien against the Premises because of any act or omission of Concessionaire, and is not discharged by Concessionaire by payment, bond or otherwise within twenty (20) days after receipt of notice of the lien by Concessionaire.

**11.1.2.10** fails to comply with the requirements set forth in EXHIBIT D; Insurance and Bonding Requirements.

**11.1.2.11** fails to keep, perform or observe any term, covenant or condition of this Agreement.

**11.1.2.12** uses or gives its permission to any person to use any portion of Premises for any illegal purpose or purpose in violation of this Agreement.



**11.1.2.13** (including any venture partner of Concessionaire), or any of their respective officers, directors, principal shareholder(s) or affiliates, is convicted of or pleads guilty to any crime in any way related to the operation of the Premises or the Airport or a public sector, governmental or quasi-governmental project or contract or related to the safety and/or security of any Airport, governmental entity or its citizens. For purposes of this Agreement:

**11.1.2.13.1** "Principal Shareholder" means an owner of shares (or equity interest, if other than a corporation) representing 10% of the voting control and/or participation (through dividends or other distributions) in the profits of an entity.

**11.1.2.13.2** "Affiliate" means any person or entity which directly or indirectly controls or is controlled by, or is under common control with an entity.

**11.1.2.13.3** "Control" or "Controlling" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity whether through the ownership of voting securities, by contract or otherwise.

**11.1.2.14** intentionally or willfully misrepresents to City any material fact.

**11.1.2.15** made any material misrepresentation or failed to make full and accurate disclosure to City in the documents, questionnaires and other materials submitted by Concessionaire with its Proposal pursuant to which this Agreement was awarded to Concessionaire, or failed to comply with all requirements, including without limitation, the ethical standards policy, set forth in the RFP.

**11.1.2.16** acts or fails to act resulting in the suspension or revocation of any rights, powers, licenses, permits or authorities necessary for the operation of its business at the Premises.

**11.1.2.17** fails to pay any lawful tax or assessments required to be paid under this Agreement.

**11.2 City's Remedies.** If Concessionaire is in default, City will notify Concessionaire in writing of the nature of the default. If Concessionaire, where a specific time period for the cure is provided in the applicable subsection of this Agreement, does not cure the default within that period or, where a time period for the cure is not specifically provided in the applicable subsection, does not cure the default within seven (7) days from receipt of notice from City, City may, without notice to Concessionaire's sureties, if any, elect to exercise any of the following remedies:

**11.2.1** Allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies under it, including, without limitation, the right to assess fines

and the right to collect rent as it becomes due together with interest at the rate of one and one half percent (1.5%) per month.

**11.2.2** Continue this Agreement in full force and effect and enter the Premises and relet all or any portion of it to other parties for Concessionaire's account. Concessionaire must pay to City on demand all costs City incurs in entering the Premises and reletting it, including, without limitation, brokers' commissions, and expenses for repairs and remodeling, attorneys' fees and all other actual costs. Reletting may be for a period shorter or longer than the remaining Term. During the term of any reletting, Concessionaire must pay to City the rent due under this Agreement on the date due, less any net rents City receives from any reletting.

**11.2.3** Terminate Concessionaire's rights under this Agreement at any time and recover from Concessionaire all costs, expenses, losses and damages recoverable under this Agreement or applicable law as a result of Concessionaire's default and the termination.

**11.2.4** Cure any default at Concessionaire's cost. If City at any time, by reason of Concessionaire's default, pays any sum to cure any default, the sum paid by City shall be immediately due from Concessionaire to City on demand, and shall bear interest at the rate of one and one-half percent (1.5%) per month from the date paid by City until the date City is fully reimbursed by Concessionaire.

**11.2.5** Exercise any and all other rights or remedies available under this Agreement or at law or in equity.

**11.3 Concessionaire Not in Default.** If, after termination for default, it is determined for any reason that Concessionaire was not in default, the rights and obligations of the parties will be the same as if the Agreement had been terminated pursuant to the Section entitled "Termination for Convenience."

#### **11.4 Security Interest.**

**11.4.1** In addition to the statutory landlord's lien, Concessionaire grants to City a valid security interest in all goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises, including the proceeds of such items, to secure payment of all rentals and other sums of money becoming due from Concessionaire under this Agreement, and to secure payment of any damages or losses that City may suffer by reason of the breach by Concessionaire of this Agreement. Concessionaire may not remove such goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises from the Premises without the written consent of City until all arrearages in rent, as well as any other sums of money then due to City under this Agreement, have been paid and discharged and all the covenants, agreements and conditions of this Agreement have been fully complied with and performed by Concessionaire.

**11.4.2** Upon the occurrence of an event of default by Concessionaire, City may, in addition to any other remedies provided in this Agreement, enter upon the Premises and take possession of any goods, wares, equipment, fixtures, furniture, improvements and other personal property of Concessionaire situated on the Premises, without liability for trespass or conversion, and sell them at public or private sale, with or without having such property at the sale, after giving Concessionaire reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale City or its assigns may purchase the property unless otherwise prohibited by law. The requirement of reasonable notice to Concessionaire will be met if such notice is given in the manner prescribed in the Section entitled "Notices", at least 5 days before the date of the sale.

**11.4.3** The proceeds from any such sale, less any expenses of the City connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), will be applied as a credit against the debts payable by Concessionaire, or as otherwise required by law; and Concessionaire will pay any deficiencies immediately.

**11.4.4** Upon request by City, Concessionaire agrees to execute and deliver to City a financing statement in a form sufficient to perfect the security interest of City in the property and the proceeds under the provisions of the Uniform Commercial Code in force in the State of Georgia. By accepting a grant of the security interest set forth herein, the parties agree that the City is not waiving its rights under any statutory lien for the payment of rent granted under this Agreement or applicable law.

## **12. TERMINATION**

**12.1 Termination by City for Cause.** City may at its option, by giving written notice to Concessionaire, terminate this Agreement:

**12.1.1** for a material breach of the Agreement by Concessionaire that is not cured by Concessionaire within seven (7) days of the date on which City provides written notice of such breach;

**12.1.2** immediately for a material breach of the Agreement by Concessionaire that is not reasonably curable within seven (7) days;

**12.1.3** immediately upon written notice for numerous breaches of the Agreement by Concessionaire that collectively constitute a material breach or reasonable grounds for insecurity concerning Concessionaire's performance; or

**12.1.4** immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Concessionaire's obligations under this Agreement or is in violation of any City Ethics Ordinances.

**12.2 Re-procurement Costs.** In addition to all other rights and remedies City may have, if this Agreement is terminated by City pursuant to the above subsection entitled "Termination by City for Cause," Concessionaire will be liable for all costs in excess of the Charges for all terminated Services reasonably and necessarily incurred by City in the completion of the Services, including the cost of administration of any agreement awarded to other Persons for completion. If City improperly terminates this Agreement for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of the Section entitled "Termination by City for Convenience."

**12.3 Termination by City for Insolvency.** City may terminate this Agreement immediately by delivering written notice of such termination to Concessionaire if Concessionaire: (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property.

**12.4 Termination by City for Convenience.**

**12.4.1** The City shall have the right to terminate the Agreement without cause at any time during the Term by giving written notice to Concessionaire at least 30 days prior to the date such termination is to be effective. Should the City terminate the Agreement prior to its expiration, the City shall reimburse the Concessionaire for the reasonable and proper unamortized costs of the capital Improvements, made by or at the cost of the Concessionaire, and approved in writing by the Aviation General Manager. Concessionaire must document the costs of any and all capital Improvements in a form and detail satisfactory to the Aviation General Manager and submit same within thirty (30) calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Improvements. The capital costs of the Improvements shall be amortized based upon a straight-line depreciation schedule over the initial Term of the Agreement, with zero salvage value.

**12.4.2** Reimbursement for unamortized costs of capital improvements shall be the Concessionaire's sole remedy in the event of Termination by City for Convenience. Concessionaire hereby waives any claims for damages, including loss of anticipated profits, in the event that the City terminates the Agreement for convenience.

**12.5 Termination for Lack of Appropriations.** If, during the Term of this Agreement, legislation establishing a Maximum Payment Amount for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the term for which a Maximum Payment Amount has been legislatively authorized.

**12.6 Effect of Termination.** Unless otherwise provided herein, termination of this Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Agreement, at law or in equity. Upon termination of this Agreement, Concessionaire shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated Services; (ii) inventory, maintain and turn over to City all work product, licenses, equipment, materials, plant, tools, and property furnished by Concessionaire or provided by City for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by City; (iv) comply with all other reasonable requests from City regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

### **13. FINES FOR VIOLATIONS**

**13.1** If Concessionaire defaults under or violates material provisions of this Agreement, in lieu of, or in addition to, any other available remedy, the Aviation General Manager may elect to impose the charges described below on a per diem basis per infraction, as follows:

**13.1.1** Violation of Premises Use;

**13.1.2** Failure to maintain required hours of operation;

**13.1.3** Failure to submit required documents and reports;

**13.1.4** Failure to remedy Customer Service, Cleanliness, Quality Assurance, Operations, and/or Facility standard;

**13.1.5** Infractions within 48 hrs. notice (as measured from the date of each written notification);

**13.1.6** Failure to provide pest control records on a monthly basis and/or display manifest reports on file in each store;

**13.1.7** Unauthorized Advertising Signage (defined as written, printed blade or storefront); or

**13.1.8** Destruction of Airport public facility deemed caused by associates or associate travel in unauthorized areas;

**13.1.9** Failure to comply with any and all published DOA, basic terms of the Agreement, federal, state, local policies, regulations, the Code, directives or standards.

First offense of any infraction listed above may result in a charge of \$500, second offence may result in a charge of \$750, and third offense may result in charge of \$1,000. Repeated violation of the above-listed infractions may result in the Concessionaire being in default of the Agreement.

**14. UNAUTHORIZED ACCESS.** Concessionaire is responsible for preventing unauthorized persons from gaining access to restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control. If federal security regulations are violated as a result of trespass by unauthorized persons into restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control, or if such door is left unsecured in violation of federal security regulations, and City is subjected to any liability, including, but not limited to, a fine(s) by the Transportation Security Administration, Concessionaire must reimburse City for the full amount of such fines promptly upon receipt of an invoice from City and pay for any liability assessed against City as a result of such unauthorized access.

#### **15. SURRENDER OF PREMISES**

**15.1** Concessionaire must yield and deliver peaceably to City possession of the Premises and all Concessionaire improvements in good condition, reasonable wear and tear accepted, upon the expiration or earlier termination of this Agreement.

**15.2** Concessionaire must remove Concessionaire's signs and trade fixtures from the Premises and must surrender the Premises in clean, orderly and presentable condition. City will retain Concessionaire's Performance and Payment Bond(s) or other securities required under **Exhibit D** until such time as all conditions of this Agreement have been satisfied, all keys to the Premises are delivered to the Aviation General Manager by Concessionaire, the Aviation General Manager determines that the Premises are clean and in good repair and the applicable period for filing liens or other claims has passed. Concessionaire will be liable to City for City's costs for storing, removing and disposing of any alterations or Concessionaire's personal property, and of restoration of the Premises.

#### **16. OWNERSHIP OF INFORMATION; CONFIDENTIALITY**

**16.1** All reports, information, data or other documents given to, prepared by or assembled by Concessionaire arising out of the work performed under this Agreement are the exclusive property of City – with the exception of employee data covered under the Privacy Act – and will be kept confidential and may not be made available to any individual or organization by Concessionaire without the prior written approval of City, provided however that these provisions shall not apply to data that is in the public domain; was previously known to Concessionaire; or was independently acquired by Concessionaire from

third parties who are under no obligation to City to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Concessionaire, nor shall they be interpreted in any way to restrict Concessionaire from complying with a legally enforceable court order to provide information or data; provided, however, Concessionaire shall immediately place City on notice of such court order to permit City the opportunity to determine whether a protective order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

**16.1.1** Except as provided in the preceding paragraph, Concessionaire shall keep confidential, and shall require its employees, agents, subordinates, subcontractors, or sublessees to keep confidential all information disclosed by City or its consultants to Concessionaire or developed by Concessionaire or Concessionaire's employees, agents, subordinates, subcontractors, or sublessees in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of this Agreement and shall entitle City to recover from Concessionaire any damages City incurs because of such breach.

**16.1.2** City shall have the right to any specifications, computer programs, technical reports, operating manuals and similar work product developed and paid for under this Agreement. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by Concessionaire, its officers, agents, employees, subcontractors, or sublessees, City shall have, without cost or expense to it, an irrevocable, nonexclusive royalty-free license to make, have made and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by City. Promptly upon request by City, Concessionaire shall furnish or obtain from the appropriate person a form of license satisfactory to City, but it is expressly understood and agreed that, as between City and Concessionaire the license herein provided for shall nevertheless arise for the benefit of City immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by City to its successors immediate, or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by City, but such license shall not be otherwise transferable.

**16.1.3 Georgia Open Records Act.** Information provided to the City is subject to disclosure under the Georgia Open Records Act ("GORA"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]."

## **17. HAZARDOUS MATERIALS**

**17.1** Concessionaire shall not cause or permit any Hazardous Material to be brought, kept or used in or about the Premises or the Airport by Concessionaire, its agents, employees, contractors, or invitees. Without limiting the foregoing, if the presence of any Hazardous Material in the Airport caused or permitted by Concessionaire results in any contamination of the Airport, Concessionaire shall promptly take all actions at its sole expense as are necessary to return the Airport to the conditions existing prior to the introduction of such Hazardous Material to the Airport; provided that City's approval of such actions, and the contractors to be used by Concessionaire in connection therewith, shall first be obtained.

**17.2** The term "Hazardous Material" means any hazardous or toxic substance, material, or waste, which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (ii) designated a "hazardous substance" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317, or (iii) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (iv) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

**17.3** In addition to, and independent of any other right of entry provided herein, City and its employees, representatives and agents shall have access to the Premises during reasonable hours and upon reasonable notice to Concessionaire in order to conduct periodic environmental inspections and tests of Hazardous Material contamination in the Premises.

**18. AIRPORT SECURITY REQUIREMENTS.** Concessionaire shall comply, at its own expense, with the TSA and the City's security requirements for the Airport including, but not limited to employee training and badging. Concessionaire shall cooperate with the TSA and the City on all security matters and shall promptly comply with any project security arrangements established by City. Compliance with such security requirements shall not relieve Concessionaire of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Concessionaire's obligation with respect to all applicable federal, state and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Premises and throughout the Airport. Additional airport security information is available on the Airport Security's web site: ([www.atlanta-airport/business/security](http://www.atlanta-airport/business/security)). See also Exhibit E, attached hereto and incorporated herein.



**19. CITY POLICIES; Airport Concessions Disadvantaged Business Enterprise (ACDBE) BUSINESS PARTICIPATION AND NON-DISCRIMINATION PROVISIONS.**

**19.1 City's Required Policies.** Concessionaire acknowledges that Concessionaire has reviewed, is familiar with and agrees to comply with:

**19.1.1 City's Airport Concessions Disadvantaged Business Enterprise Policy** (See Appendix A); as the same may be amended from time to time by the City, Georgia Department of Transportation or US Department of transportation ("USDOT").

**19.1.1.1** In addition to its compliance with the ACDBE Policy as the same may be amended from time to time by the City, Georgia Department of Transportation or U.S. Department of Transportation, Concessionaire shall work in good faith the City's Office of Contract Compliance ("OCC") (or any other federal, state or local governmental or quasi-governmental agency) to maximize opportunities in the utilization of certified ACDBE firms during the construction build-out of the concessions space(s), as well as any on-going supply opportunities. Any submittals provided by Concessionaire to the OCC prior or subsequent to the execution of this Agreement related to the utilization of such firms shall be incorporated herein by this reference. A copy of the current OCC requirements are attached hereto as Appendix A and incorporated herein by this reference.

**19.1.2 City's equal employment opportunity policy** (See Code Sections 2-1200 and 2-1414; Appendix A), as follows:

**Equal Employment Opportunity (EEO) Provision.** During the performance of the Agreement, Concessionaire agrees as follows:

- (a) The Concessionaire shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Concessionaire agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- (b) The Concessionaire shall, in all solicitations or advertisements for employees, placed by or on behalf of the Concessionaire, state that all qualified applicants will receive

consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

- (c) The Concessionaire shall send to each labor union or representative of workers with which the Concessionaire may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Concessionaire's commitments under the equal employment opportunity program of the City of Atlanta and under the Code and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Concessionaire shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- (d) The Concessionaire shall furnish all information and reports required by the contract compliance officer pursuant to the Code, and shall permit access to the books, records, and accounts of the Concessionaire during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- (e) The Concessionaire shall take such action with respect to any sub-Concessionaire as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Concessionaire becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Concessionaire or the city may request the United States to enter into such litigation to protect the interests of the United States.
- (f) The Concessionaire and its sub-Concessionaires, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Concessionaire and its sub-Concessionaires.
- (g) The Concessionaire shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each sub-Concessionaire or vendor.
- (h) A finding, as hereinafter provided, that a refusal by the Concessionaire or sub-Concessionaire to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

1. Withholding from the Concessionaire in violation all future payments under the involved contract until it is determined that the Concessionaire or sub-Concessionaire is in compliance with the provisions of the contract;
2. Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Concessionaire or sub-Concessionaire demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code;
3. Cancellation of the public contract;
4. In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Concessionaires, sub-Concessionaires or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

**19.1.3** City's business non-discrimination policy (See Code Sections 2-1358 and 2-1387; Appendix A).

**19.1.4** City's Atlanta Workforce Agency/First Source Jobs Policy and Agreement (See Code Section 2-1655; Appendix A).

**19.1.5** City's ethics in public contracting policy (See Code Sections 2-1481 through 2-1490);

**19.1.6** City's conflicts of interest policy (See Code Section 2-1482);

**19.1.7** City's prohibition against predatory lending (See Code Section 2-1213), as follows:

**Prohibition against Contracting with Predatory or High Cost Lenders.** By signing below, the Contractor, or its authorized agent, certifies, under penalty of perjury, that this Agreement is made by a person or business entity that is neither a predatory lender nor a high cost lender, nor is the Contractor an affiliate of a predatory lender or a high cost lender, as defined by Code Section 58-102. The undersigned Contractor, or authorized agent, further certifies that he/she is an agent duly authorized to sign this certification on behalf of the Contractor.

**19.1.8** City's Green Initiatives (Atlanta Sustainable Building Ordinance (ASBO)).

**19.1.9** City's prohibition against kickbacks or gratuities (See Code Section 2-1484), as follows:

Prohibition against Kickbacks or Gratuities. Concessionaire acknowledges the following prohibitions on kickbacks and gratuities:

- (a) It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.
- (b) It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- (c) It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

**19.1.10** City's prohibition against and reporting of anti-competitive practices (See Code Section 2-1210, as follows:

The Concessionaire certifies and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Concessionaire, to solicit or secure this Agreement; and that the Concessionaire has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the Concessionaire, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty, and upon a finding after notice and hearing, the City shall have the right to terminate the Agreement without liability, and, at its discretion, to deduct from the Agreement, or otherwise recover the full amount of, such fee, commission, percentage, gift or consideration.

**19.2 Non-discrimination Certificates.** By the execution of this Agreement, Concessionaire certifies as follows:

The Concessionaire or the Services covered by this Agreement will not discriminate in any way in connection with this Agreement against any employee or applicant for employment because of race, color, religion, sex, national origin or physical handicap, and Concessionaire will take affirmative action to ensure that applicants are employed, and those employees are treated during employment without regard to their race, color, religion, sex, national origin or physical handicap. Concessionaire shall state in all advertisements and solicitations that it is an equal employment opportunity employer.

**19.3 USDOT Non-discrimination Ordinance.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, religion, sex, national origin, or physical handicap in connection with the award or performance of any agreement covered by 49 CFR part 23. Concessionaire agrees to include the above statements in any subcontract or subsequent agreement that it enters into and cause those businesses to similarly include the statements in subsequent agreements.

**19.4 Public Use and Federal Grants.**

**19.4.1** To the best of Concessionaire's knowledge, the Premises is subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between City of Atlanta and the United States of America, as amended. City and Concessionaire represent that none of the provisions of this Agreement violates any of the provisions of the Sponsor's Assurance Agreement.

**19.4.2** The parties hereto further covenant and agree that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

**19.4.3** Concessionaire for itself, its sub-Concessionaires, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over, or under the Premises and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to the Code of Federal Regulations for the Department of Transportation at Title 49, Subtitle A, Office of the Secretary of Transportation, Part 21, titled "Nondiscrimination in Federally Assisted Programs of the Department of Transportation

— Effectuation of Title VI of the Civil Rights Act of 1964,” and as said regulations may be amended; and (4) in the event of Concessionaire’s breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement therefore, and hold the same as if this Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of 49 CFR Subtitle A, Part 21, are followed and completed, including the exercise or expiration of appeal rights.

## **20. MISCELLANEOUS PROVISIONS**

**20.1 Award and Execution of Agreement.** The award and execution of this Agreement by City is authorized by Resolution No. \_\_\_\_\_, adopted by City’s Council on \_\_\_\_\_, 20\_\_\_\_, and approved by City’s Mayor on \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached to this Agreement as Exhibit B. This Agreement will not become binding on City and City will incur no liability hereunder until it has been duly executed by Concessionaire, returned to City with all required submittals, including insurance and bonding, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney, or his or her designee, as to form and delivered to Concessionaire.

**20.2 Identity of Owner and Manager.** The City is the owner of record of the property of which the Premises is a part. The person authorized to manage the property, which includes the Premises, is the Aviation General Manager of the Department of Aviation.

**20.3 Delegation of Authority.** Any act(s), whether discretionary or ministerial, that the Aviation General Manager is authorized or required to perform under this Agreement may be performed by such person(s) as the Aviation General Manager shall designate in writing to perform such act(s).

**20.4 No Partnership or Joint Venture.** City and Concessionaire are not and shall not be deemed to be, for any purpose, partners or joint venturers with each other.

**20.5 Independent Concessionaire; No Contractual Relationship.** Concessionaire will perform under this Agreement as an independent entity and not as an agent or employee of City. No contractual relationship between City and any sub-Concessionaire or sub-consultant is created by an approval of City for use under this Agreement.

**20.6 Usufruct.** The rights of Concessionaire hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

**20.7 Recording Prohibited.** Neither City nor Concessionaire shall be entitled to record this Agreement, any memorandum or short form of this Agreement or any affidavit with respect to this Agreement.

**20.8 Attorneys’ Fees.** If City should bring any action under this Agreement or consult or place this Agreement, or any amount payable to Concessionaire pursuant to this

Agreement, with an attorney concerning or for enforcement of any of City's rights hereunder, then Concessionaire agrees in each and any such case to pay to City all costs, including, but not limited to, court costs and reasonable attorneys' fees, incurred by City in connection therewith.

**20.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Agreement shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Agreement shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by City shall not discharge or relieve Concessionaire from Concessionaire's obligation to perform each and every covenant and agreement of this Agreement to be performed by Concessionaire.

**20.10 Gender; Singularity.** Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**20.11 Exhibits and Attachments.** All exhibits, appendices, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes, including the following:

- 20.11.1 Exhibit A – Scope of Services
- 20.11.2 Exhibit A.1 – Financial Offer Form
- 20.11.3 Exhibit B – City Council Resolution
- 20.11.4 Exhibit C – Construction Safety and Health Plan
- 20.11.5 Exhibit D – Insurance and Bonding Requirements
- 20.11.6 Exhibit E – Airport Access, Security and Safety Measures
- 20.11.7 Appendix A – Office of Contract Compliance Requirements

**20.12 Time of the Essence.** Time is of the essence with regard to each provision of this Agreement.

**20.13 Evidence of Authority.** If Concessionaire is other than a natural person, Concessionaire shall deliver to City such legal documentation as City may request to evidence the authority of those signing this Agreement to bind Concessionaire.

**20.14 Drug-Free Workplace Policy.** Concessionaire acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on any City property, including, but not limited to, the Premises.

**20.15 Applicability of Code Provisions.** All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of City of Atlanta, Georgia, now and as may be amended from time to time.

**20.16 Successors and Assigns.** Each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of City and Concessionaire, and the legal representatives, successors and assigns of either or both of them.

**20.17 Notices.** All notices required to be given to City hereunder shall be in writing and given by postage prepaid registered or certified mail, return receipt requested, addressed as follows:

Paul Brown, Concessions Director  
Department of Aviation  
Hartsfield-Jackson Atlanta International Airport  
P.O. Box 20509  
Atlanta, Georgia 30320  
Office: 404-382-2217  
Facsimile: 404-762-3732  
E-mail: [Paul.Brown@Atlanta-Airport.com](mailto:Paul.Brown@Atlanta-Airport.com)

Notices hereunder may be transmitted by e-mail or other electronic delivery with confirmation of transmission, delivery and receipt.

All notices required to be given to Concessionaire hereunder shall be sent to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**20.18 Interpretation.** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Concessionaire. This Agreement shall be construed and performed according to the laws of the State of Georgia. In the event of a dispute with regard to interpretation of any provision of this Agreement, the parties agree to bring suit and be subject to the jurisdiction of the Fulton County Superior Court.

**20.19 Section Headings.** The section headings contained herein are for the convenience of City and Concessionaire and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.



**20.20 Reference to Clause or Section.** When reference in this Agreement is made to a specific clause with a specific title set forth in a section heading or section number, such reference will include all sections and subsections of such clause.

**20.21 Integrated Agreement, Modification.** This Agreement contains all the agreements of the parties and cannot be further amended or modified except by written agreement. If the parties hereto previously have entered into or do enter into any other lease, license, permit or agreement covering Premises or facilities at the Airport, this Agreement and the terms, conditions, provisions and covenants hereof shall apply only to the Premises herein particularly described, and this Agreement or any of the terms, conditions, provisions or covenants hereof shall not in any way or in any respect change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the parties hereto under or by reason of any other said lease, permit, license or other agreement between said parties.

**20.22 Force Majeure.** Neither party shall be deemed to be in breach of this Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively "Force Majeure Event"). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this Clause shall not apply to and Concessionaire shall not be relieved of its obligation to pay rent or other sums due hereunder, such obligation being absolute and unconditional.

**[SIGNATURES BEGIN ON NEXT PAGE]**

**CONCESSIONAIRE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: **Secretary/Assistant Secretary (SEAL)**

**CITY:**

**ATTEST:**

\_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Municipal Clerk (SEAL)**

**APPROVED:**

**APPROVED:**

\_\_\_\_\_  
**Chief Procurement Officer**

\_\_\_\_\_  
**Aviation General Manager**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Senior Assistant City Attorney**

## **Exhibit A**

### **Scope of Services and Map of Premises Location**

## Exhibit A

### Scope of Services and Map of Premises Location

#### **Scope:**

Interested Respondents shall submit a proposal to provide, operate, maintain and manage a Hair Salon/Barbershop Services concession (individually and collectively referred to herein as the "Premises") in the Atrium (ATR-S19, approximately 1,349 Square feet).

#### **1. Permitted Uses Generally:**

The following uses permitted for the Hair Salon/Barbershop Services, as outlined in **Section 2, Specific Uses** are the services that may be offered by interested Respondent. Any and all items sold must meet Federal Aviation Administration (FAA) security regulations. The Aviation General Manager reserves the right to approve the Barbershop Services Concept. The concept must be clearly defined in the service plan and included in the business plan submitted with the Respondent's proposal.

Other than the Services listed, no other services, products, or merchandise shall be sold or offered by Tenant without the written consent of the Aviation General Manager. In the event any question or dispute arises as to the sale of any specific item or category of items on the premises, the Tenant may submit a request in writing to Aviation General Manager asking that matter be reviewed. The Aviation General Manager shall give a decision in writing and such determination is final authority in the matter. The Tenant shall abide by and conform to decision of the General Manager.

The Aviation General Manager shall have the right, at his sole discretion, at any time prior to or during the term of the lease, to expand, reduce or otherwise modify the products or merchandise offerings.

The respondent and any of its sub concessionaire(s), if applicable will also be responsible for cleaning and maintaining the "Premises" so as to provide an environment that is "opening day fresh" in the Appearance at all times.

#### **2. Specific Uses:**

Full service hair salon/barbershop intended to serve women and men to meet hairstyling needs for high volume, multi-cultural passenger/customer mix. Services shall include hair cutting, shampooing, styling, hair trimming, scalp massages, relaxer, blow drying, waxing, shaving, trimming beard/mustache and other services available at a full service hair salon.

**A. Service Requirements.** In order for proposal to be considered , the following requirements must be met by the respondent:

1. Sufficient staff in order to provide reasonable, prompt and efficient services at prices for similar services in order nearby businesses of this type and to meet high volume customer demand;
2. Comply with all rules and regulations of the Georgia State Board of Cosmetology and/or the Georgia State Board of Barbers and all Georgia laws and regulations governing business of this type;
3. All employees shall have current and up to date licenses that are posted in the premises;
4. All equipment use this contract shall be clean, sanitized and professional; and
5. All OSHA requirements shall be strictly followed regarding the use of chemicals.

**3. Optional services:**

Respondent may provide optional services that will complement the Hair Salon/ Barbershop Services concession. Optional services may include, but are not limited to nail care services, eyebrow services, neck massage etc. The Aviation General Manager shall have the right, at his sole discretion, at any time prior to or during the term of the lease, to expand, reduce or modify optional services.

**4. Non- Permitted Inventory/Concept:**

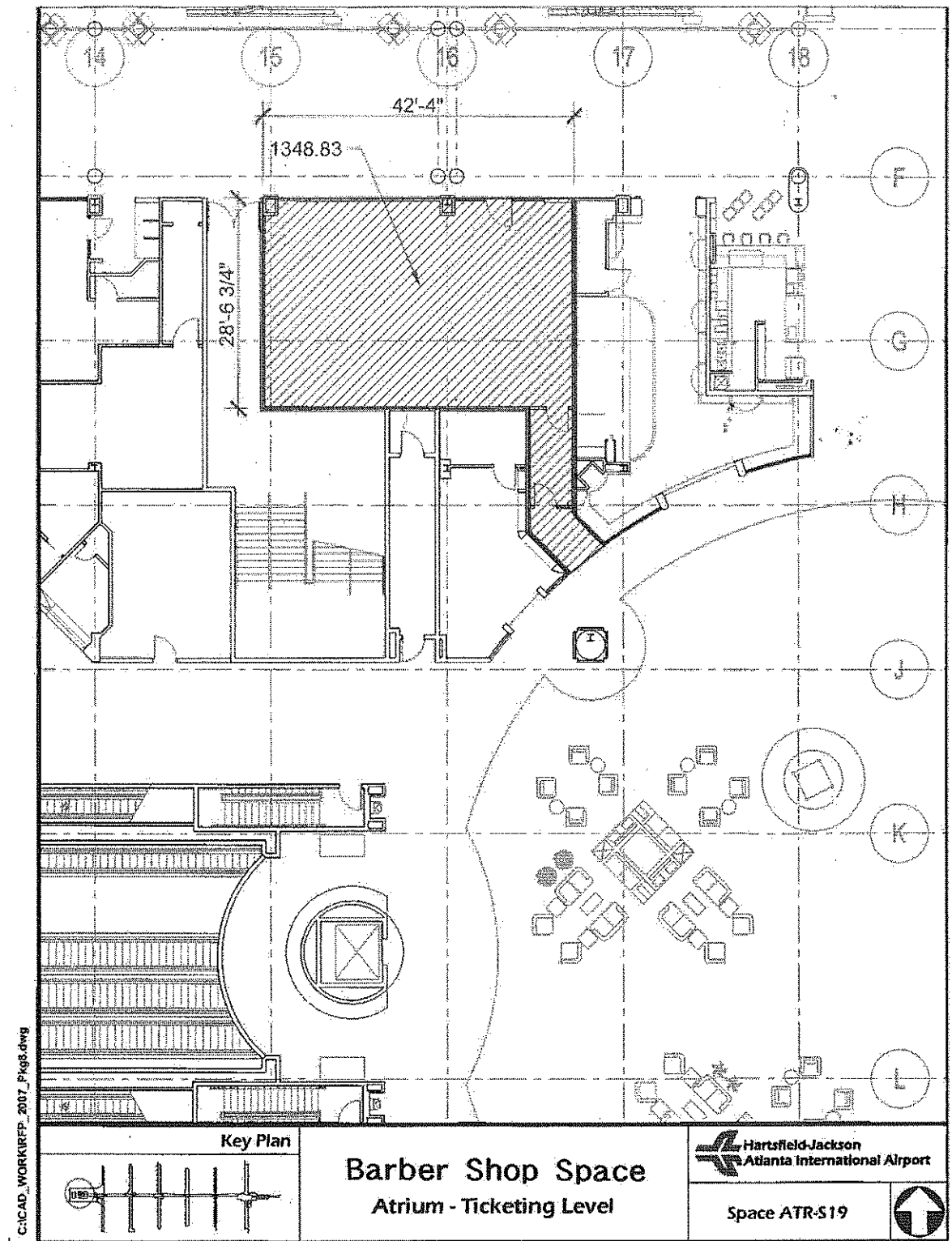
Respondent understands and agrees that the following products or services are not included within the uses permitted under this agreement:

Any duty-free/in bond merchandise items including the right to make or receive deliveries at Airport for such duty- free/in-bond merchandise.

Any and /or all food and beverage items.

Retail merchandise other hair care products without the express written consent of Aviation General Manager except where noted in the description of uses permitted in the document.

Any shoeshine services.



**EXHIBIT A.1**

**FINANCIAL OFFER FORM  
FC-7500: Hair Salon/Barbershop Services**

The undersigned having (a) examined carefully the accompanying Instructions to Respondents ("Instructions"), and the form of the Concessions Lease Agreement ("Agreement") at Hartsfield-Jackson Atlanta International Airport ("Airport"), (b) visited the Airport, (c) become familiar with all terms and conditions specified in the Instructions and the Agreement and with the proposed operation of the Hair Salon/Barbershop Services, hereby submits this Financial Offer Form for compensation and privilege of performing the Services required and allowed under the Agreement at the Airport to be paid to the City by the undersigned in consideration of the execution of said Agreement by the City and the performance of all terms and conditions therein agreed by the Concessionaire on its part to be kept and performed.

The amount of the first year's Minimum Annual Guarantee (MAG) is Dollars \$\_\_\_\_\_.

**Percentage Rental Fee per Category:**

Category	Percentage of Gross Receipts	Forecasted Revenue
Services	8%	
Retail	14%	

**Please sign the appropriate place:**

**Signature** \_\_\_\_\_

**Title** \_\_\_\_\_

**Company** \_\_\_\_\_

**Exhibit B**

**City Council Resolution**

**(Document to be inserted at the time of Agreement execution.)**



## **EXHIBIT C**

### **CONSTRUCTION SAFETY AND HEALTH PLAN**

## Exhibit C

### CONSTRUCTION SAFETY AND HEALTH PLAN

- 1.0 Safety and Health Plan.** City has established this Construction Safety and Health Plan ("Plan") to promote safety and to minimize and control hazards and risks associated with construction projects at the Airport. In this Plan, City's safety representative is \_\_\_\_\_ and any other individual City designates in writing to Concessionaire (collectively, "Safety Representative(s)").
- 2.0 Plan Highlights.** The substance of this Plan addresses:
- 2.1 Periodic inspection by City of Concessionaire's Work, Jobsites and storage areas to assure safe conditions and practices.
  - 2.2 The training of all employees in all Plan requirements.
  - 2.3 Immediate reporting to City's Safety Representative(s) of any death, injury or damage to property at any Jobsite or Work storage area on or off the Airport at which Work is performed.
  - 2.4 Full cooperation in inspections by City's Safety Representative(s) or other governmental or non-governmental agencies exercising jurisdiction over the Work. A copy of any notice or other written documentation received by Concessionaire from any agency must be submitted to the City's Safety Representative(s) immediately upon receipt.
  - 2.5 Use of approved regulatory and City required safety equipment and protection devices, as described in the Plan.
  - 2.6 Immediate correction by Concessionaire of any unsafe conditions or acts by its employees.
  - 2.7 Medical surveillance requirements for personnel exposed to hazardous substances, e.g. radiation badges.
  - 2.8 Safety requirements and procedures for decontamination facilities, e.g. protective clothing and warning signs.
  - 2.9 The use of forms concerning this Plan that City may direct Concessionaire to use.

**3.0 Pass Down Provisions.** Concessionaire must include the obligations of this Plan in all contracts or other similar documents utilized by it to obtain goods and services concerning this Contract and the Work.

**4.0 General. Concessionaire must:**

4.1 develop a Site-Specific Safety Plan that addresses all Work activities, i.e. fall exposures, excavations, cranes, etc., including the requirement for a 100% fall protection program for all work performed 6 feet or more above ground or finished floor level, operating criteria for motorized equipment and an emergency and evacuation plan.

4.2 This Site-Specific Safety Plan must be submitted to the Safety Representative(s) and reviewed for approval prior to start of the Work. If any Safety Representative(s) determines that the Site-Specific Safety Plan is deficient in any manner, Concessionaire must, prior to commencing any Work, correct such deficiencies upon receipt of notice from the Safety Representative(s).

4.3 Provide safety data information to the Safety Representative(s), as required.

4.4 Report all accidents and incidents to City's Representative(s) on a State of Georgia First Report of Injury Form. Incident Reports must be submitted on a Supervisor's Incident Report Form. Only City-approved forms will be accepted for reporting accidents or incidents.

4.5 Provide weekly man-hour reports to the Safety Representative(s) on the Monday following the end of each Work week.

**5.0 Concessionaire's Safety Manager.** Concessionaire must appoint a Safety Manager during the period when Work is performed. Concessionaire's Safety Manager must perform daily safety inspections of all Jobsites to eliminate unsafe acts and/or conditions and ensure compliance with the Contract. Concessionaire's Safety Manager must also perform the following:

5.1 Assist in investigating all accidents and implementing immediate corrective actions.

5.2 Control the availability and use of necessary safety equipment, including personal protective for all employees.

5.3 Cooperate with Safety Managers of other contractors, and take necessary steps to promptly implement appropriate safety recommendations.

5.4 Attend safety meetings.

## **6.0 Miscellaneous Safety Requirements.**

6.1 **Safe Operations.** Concessionaire must conduct all operations under this Contract to avoid the risk of health endangerment health, bodily harm to individuals and damage to property. Concessionaire must continually and diligently inspect all equipment, materials and Work to discover any conditions that might involve such risks and correct those conditions.

6.2 **Safety Orders.** Concessionaire must have copies of appropriate Federal, State and Local Safety Regulations at all Jobsites available for employees to review.

6.3 **General Safety Provisions.** Concessionaire must protect the health and safety of employees, the public and other persons, prevent damage to property, materials, supplies and equipment and avoid interrupting the normal operation of the Airport.

6.4 **Fire Protection.** Concessionaire must establish a Fire Prevention Plan incorporating, as a minimum, OSHA and NFPA standards. Only approved safety cans may be used for flammable and combustible liquids. "No Smoking Or Open Flame" signs and fire extinguishers must be provided where required or as directed by City. Approved safety cans must be metal with flash arresters and spring-loaded tops.

6.5 **Scaffolding: Concessionaire must:**

6.5.1 Ensure that all employees working on, erecting, dismantling or modifying any scaffolding are trained by a competent Person and maintain documentation concerning all training at the Project.

6.5.2 Ensure that a complete guardrail system is utilized on scaffolding at all working heights and fall protection plan implemented over six (6) feet.

6.6 **Protection of the Public and Property.** Concessionaire must take all steps necessary to ensure protection of the public and property.

## **7.0 Fall Protection Requirements.** These fall protection requirements are mandatory for all trades performing Work on the Project.

7.1 Concessionaire must take all practical measures to eliminate, prevent and control fall hazards. The Project must be surveyed prior to the commencement of any Work to identify all hazards of Personnel falling from elevations. First consideration must be given to the elimination of those hazards. If a fall hazard

cannot be practically eliminated, second consideration must be given to implementing effective permanent means of fall protection.

- 7.2 If a fall hazard cannot be eliminated or fall prevention assured, then effective fall protection means must be planned, implemented and carefully monitored to control the risks of personal injury due to falling. Fall protection systems must be continuous by design and Concessionaire must control against intermittent or improper use.
  - 7.3 All employees who are working where fall hazards cannot be eliminated or falls prevented must be uniformly equipped and trained.
  - 7.4 All employees must utilize a full body harness with two (2) shock-absorbing lanyards to allow continuous protection.
  - 7.5 Floor or wall openings must be properly barricaded at all times. Floor covers, on openings greater than three feet, may not be used to protect open holes without the additional protection of a complete handrail system.
  - 7.6 Guardrail systems consisting of a top rail, mid-rail and toe plate must be installed on perimeter edges or scaffolding.
  - 7.7 Personal fall arrest systems such as vertical lifelines, retractable and shock absorbing lanyards, full body harnesses, netting, etc. must be provided in compliance with OSHA CFR 29, 1926, Subpart M, or as directed by City.
- 8.0** Eye, Face and Head Protection Policy. All employees must, at all times, wear American National Standard Institute (ANSI) approved safety glasses with side shields on the Jobsite.
- 9.0** Accident Investigation and Reporting.
- 9.1 All accidents or incidents resulting in personal injury or property damage must be immediately reported verbally to the Safety Representative(s) and followed by a written report within 24 hours of the occurrence.
  - 9.2 Emergency Telephone Numbers. Concessionaire must post a list of emergency telephone numbers; to include doctor and ambulance, fire, etc., next to telephones at the Project.
  - 9.3 Critical Injuries. City must be notified immediately in the following cases utilizing the Hartsfield Emergency Notification procedures:
    - 9.3.1 Spinal cord injury;
    - 9.3.2 Head trauma;

- 9.3.3 Amputations;
  - 9.3.4 Fatality;
  - 9.3.5 Severe burns;
  - 9.3.6 Heart attack; and
  - 9.3.7 Hospitalizations.
- 9.4 Concessionaire must secure the affected area immediately after the accident in order to prevent any alteration of the scene before the investigation. This includes immediately contacting the Safety Representative(s). The area is to be cordoned off and an individual posted by Concessionaire to restrict unauthorized personnel as necessary
- 9.5 Concessionaire shall not make any news releases or statements to the public regarding any matters related to the Project.
- 9.6 Witness Statements. Concessionaire must assist the City in obtaining witness statements when there has been an accident. All statements are to be recorded and then typed. The witness must sign and date the statement after it is typed.
- 9.7 The Incident/Accident Report form must be filed within twenty-four (24) hours of the occurrence.
- 9.8 Appropriate drug screening must be conducted after the incident or accident.
- 10.0 Fire Prevention Program.** A Fire Prevention Program must be submitted in writing to City for review and coordination with other Jobsite activities prior to commencing Work. Such program must include:
- 10.1 Restriction of burning to designated areas. No unauthorized fires shall be permitted on Jobsite.
  - 10.2 Assignment of fire watches, trained and equipped to prevent or control fires, for all welding and burning operations. Fires should be monitored for three hours after the burning.
  - 10.3 Proper identification, storing, handling and use of flammable Material to prevent accidental ignition.
  - 10.4 Adequate fire extinguishing equipment appropriate for the operations being performed must be provided and employees must be trained in the maintenance and use of such equipment.
  - 10.5 Evacuation procedures and fire drills as required by City.

**Exhibit D**  
**INSURANCE/BONDING REQUIREMENTS**

**EXHIBIT D**  
**INSURANCE & BONDING REQUIREMENTS**  
**FC-7500: HAIR SALON AND BARBERSHOP SERVICES AT H-JAIA**

**A. Preamble**

The following requirements apply to all work under the Agreement. Compliance is required by all Concessionaires. **To the extent permitted by applicable law, the City of Atlanta ("City") reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Agreement.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

**1. Evidence of Insurance and Bonding Required Before Work Begins**

**No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.**

At the time Concessionaire submits to City its executed Agreement, Concessionaire must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Concessionaire does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any proposal security provided by Concessionaire.

If the Concessionaire is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Concessionaire shall tender insurance certificates and bonds in the name of Concessionaire's entity or partnership as the primary insured.

**2. Project Number & Name**

The project number (FC-7500) and name (Hair Salon and Barbershop Services at H-JAIA) must be referenced in the description section of the insurance certificate.

**3. Minimum Financial Security Requirements**

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-



Casualty. Upon request, the Concessionaire must submit the ratings for each company to the City.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- iv) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Concessionaire in writing. Concessionaire must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Concessionaire's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Agreement will not relieve Concessionaire from any liability under the Agreement. Concessionaire's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Agreement will not be construed to conflict with or limit Concessionaire's indemnification obligations under the Agreement.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Concessionaire must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Agreement and Exhibit D (including any attachments thereto) that Concessionaire receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management  
68 Mitchell St., Suite 9100  
Atlanta, GA 30303  
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Concessionaire shall provide the City with evidence of required insurance and bonding prior to the commencement of this Agreement, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies; these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

**NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Agreement.**

9. Mandatory Sub-Contractor/Consultant Compliance

Concessionaire must require and ensure that all of Concessionaire's subcontractors operating under the Agreement at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Concessionaire.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Concessionaire must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Concessionaire must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Agreement:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Concessionaire must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- ☒ Contractual Liability
- ☒ Broad Form Property Damage
- ☒ Premises Operations
- ☒ Personal Injury
- ☒ Advertising Injury
- ☒ Fire Legal Liability
- ☒ Medical Expense
- ☒ Independent Contractor/Consultants/Sub-Contractor/Consultants
- ☒ Products – Completed Operations

- ☒ Additional Insured Endorsement (primary & non-contributing in favor of the City of Atlanta)
- ☒ Waiver of Subrogation in favor of the City of Atlanta

D. Product Liability Insurance

Concessionaire must procure and maintain Product Liability Insurance in an amount not less than **\$1,000,000 per occurrence**.

E. Commercial Automobile Liability Insurance

Concessionaire must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- ☒ Owned, Non-owned & Hired Vehicles
- ☒ Waiver of Subrogation in favor of the City of Atlanta

If Concessionaire does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Concessionaire's personal automobile policy or the Commercial General Liability coverage required under this Exhibit D.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **ten million (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

F. Excess or Umbrella Liability Insurance

Concessionaire shall procure and maintain a policy providing Excess or Umbrella Liability Insurance which is at least as broad as the underlying policy. This insurance, which shall be maintained throughout the life of the Agreement, shall be in an amount of not less than **\$3,000,000 per occurrence**.

- ☒ Coverage must follow form with primary policy
- ☒ May be used to achieve minimum general and auto liability limits
- ☒ Coverage must be as broad as primary policy

G. Performance and Payment Bonds

At, or prior to, Concessionaire's execution of the Agreement, Concessionaire must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to

one hundred percent (100%) of the first year's Minimum Annual Guarantee ("MAG") specified in the Agreement, naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at Exhibit D-1. The bonds must be renewed annually at one hundred percent (100%) of the then current year's MAG specified in the Agreement. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Concessionaire may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, prior to the commencement of any construction work by or at the instance of Tenant within the Premises, Concessionaire must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Tenant shall provide to the City, a Payment Bond in an amount equal to one hundred percent (100%) of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligee, shall meet the other requirements of the Agreement, and shall remain in full force and effect until: (i) all Tenant Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Tenant Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.
2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance of its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta,

Georgia, upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

6. For additional information regarding Payment and Performance Bonds, please see Exhibit D-1 attached hereto and incorporated herein by this reference.

**EXHIBIT D-1**

**REQUIRED FORMS OF PERFORMANCE AND PAYMENT BONDS**

## EXHIBIT D-1

### ATTACHMENT 1

#### Performance Bond

##### INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.



## Performance Bond

"City" City of Atlanta, Georgia  
"Project" Hair Salon and Barbershop Services at Hartsfield-Jackson Atlanta International Airport  
"FC No." 7500  
"Principal"  
Type of Organization ("X" one):  
☐ Individual  
☐ Partnership  
☐ Joint Venture  
☐ Corporation

"Surety:" (Name and Business Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

duly authorized by the Commissioner of Insurance of  
the State of Georgia to transact surety business in the  
State of Georgia.

"Agreement:" Agreement between Principal and City, dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, regarding  
performance of Work relative to the Project.

"Penal Sum:" \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto, as named above, are held and firmly bound to the City in the above Penal Sum for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, jointly and severally. Principal and Surety agree that the Penal Sum shall be equal to or greater than one hundred percent (100%) of the total Minimum Annual Guarantee ("MAG") as specified in the Agreement for the first year of the Term as defined therein. If this bond is renewed annually as described below, then Principal and Surety agree that the Penal Sum shall equal or exceed the MAG as specified in the Agreement for the same 12-month period of the annual bond.

WHEREAS, the Principal and the City entered into the Agreement identified above;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully and fully comply with, perform and fulfill all of the undertakings, covenants, conditions and all other of the terms and conditions of said Agreement, including any and all duly authorized modifications of such Agreement, within the original term of such Agreement and any extensions thereof, which shall include, but not be limited to any obligations created by way of warranties and/or guarantees for workmanship and materials which warranty and/or guarantee may extend for a period of time beyond completion of said Agreement, this obligation shall be void; otherwise, of full force and effect.

And the Surety to this bond, for value received, agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect for a minimum of one (1) year (i.e., twelve (12) full months) beginning from the Effective Date of the Agreement. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

It is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. Sections 13-10-1 and 36-82-101, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL: \_\_\_\_\_

\_\_\_\_\_  
President/Vice President (Sign)

\_\_\_\_\_  
President/Vice President (Type or Print)

Attested to by:

\_\_\_\_\_  
Secretary/Assistant Secretary (Seal)

SURETY: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact (Sign)

\_\_\_\_\_  
Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

\_\_\_\_\_  
Associate/Assistant City Attorney

APPROVED

\_\_\_\_\_  
City's Chief Financial Officer

## EXHIBIT D-1

### ATTACHMENT 2

#### Payment Bond

##### INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

## Payment Bond

"City" City of Atlanta, Georgia  
"Project" Hair Salon and Barbershop Services at Hartsfield-Jackson Atlanta International Airport  
"FC No." 7500  
"Principal"  
Type of Organization ("X" one):  
☐ Individual  
☐ Partnership  
☐ Joint Venture  
☐ Corporation

"Surety:" (Name and Business Address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

duly authorized by the Commissioner of Insurance of  
the State of Georgia to transact surety business in the  
State of Georgia.

"Agreement:" Agreement between Principal and City, dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, regarding  
performance of Work relative to the Project.

"Penal Sum:" \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto, as named above, are held and firmly bound to the City in the above Penal Sum for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, jointly and severally. Principal and Surety agree that the Penal Sum shall be equal to or greater than one hundred percent (100%) of the total Minimum Annual Guarantee ("MAG") as specified in the Agreement for the first year of the Term as defined therein. If this bond is renewed annually as described below, then Principal and Surety agree that the Penal Sum shall equal or exceed the MAG as specified in the Agreement for the same 12-month period of the annual bond.

WHEREAS, the Principal and the City entered into the Agreement identified above;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully and fully comply with, perform and fulfill all of the undertakings, covenants, conditions and all other of the terms and conditions of said Agreement, including any and all duly authorized modifications of such Agreement, within the original term of such Agreement and any extensions thereof, which shall include, but not be limited to any obligations created by way of warranties and/or guarantees for workmanship and materials which warranty and/or guarantee may extend for a period of time beyond completion of said Agreement, this obligation shall be void; otherwise, of full force and effect.

And the Surety to this bond, for value received, agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect for a minimum of one (1) year (i.e., twelve (12) full months) beginning from the Effective Date of the Agreement. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

It is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. Sections 13-10-1 and 36-82-101, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL: \_\_\_\_\_

\_\_\_\_\_  
President/Vice President (Sign)

\_\_\_\_\_  
President/Vice President (Type or Print)

Attested to by:

\_\_\_\_\_  
Secretary/Assistant Secretary (Seal)

SURETY: \_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact (Sign)

\_\_\_\_\_  
Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

\_\_\_\_\_  
Associate/Assistant City Attorney

APPROVED

\_\_\_\_\_  
City's Chief Financial Officer

## EXHIBIT E

### DISPUTE RESOLUTION PROCEDURES

1. If Service Provider contends it is entitled to compensation or any other relief from City or if there are any disagreements over the scope of Services or proposed changes to the Services, Service Provider shall, without delay and within three (3) days of being aware of the circumstances giving rise to Service Provider's claim, provide written notice of its claim to City. If Service Provider fails to give timely notice as required by this subsection or if Service Provider commences any alleged additional work without first providing notice, Service Provider shall not be entitled to compensation or adjustment for any such work to the extent timely notice was not provided. Such notice shall include sufficient information to advise City of the circumstances giving rise to the claim, the specific contractual adjustment of relief requested and the basis for such request. Within ten (10) days of the date that Service Provider's written notice to City is required under this subsection, Service Provider shall submit a Proposed Change Document relating to the claim meeting the requirements of Subsection 5.3.2 of this Agreement.
2. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Service Provider and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.
3. If a dispute or disagreement cannot be resolved informally Service Provider Authorized Representative and Authorized City Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Authorized Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**EXHIBIT F**

**AIRPORT ACCESS, SECURITY AND SAFETY MEASURES**  
**(AS APPLICABLE)**

## **EXHIBIT F**

### **AIRPORT ACCESS, SECURITY AND SAFETY MEASURES** **(AS APPLICABLE)**

1. **Work in Progress.** Contractor shall be responsible for and shall bear any and all risk of loss or damage to work in progress and, pursuant to the Section titled "TITLE AND RISK OF LOSS," to equipment and materials.
2. **Maintenance.** Contractor shall maintain the Work including any provisionally accepted portions thereof and including any portions occupied by City or put into service until final acceptance of the Work as a whole. Use shall not constitute acceptance, relieve Contractor of its responsibilities, or act as a waiver by the City of any terms of this Agreement (see specification section SP-4B, Extended Maintenance).
3. **Material Handling.** Contractor's responsibility for materials and plant equipment required for the performance of this Agreement shall include:
  - 3.1 Receiving and unloading;
  - 3.2 Storing in a secure place and in a manner subject to City's review. Outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by Contractor;
  - 3.3 Delivering from storage to construction site all materials and plant equipment as required; and
  - 3.4 Maintaining complete and accurate records for City's inspection of all materials and plant equipment received, stored and issued for use in the performance of this Agreement.
4. **Security.** Contractor shall at all times conduct all operations under this Agreement in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property at the Jobsite. Contractor shall continuously inspect all equipment, materials and work to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.
5. **Airport Security Requirements.** Contractor shall comply with the Transportation Security Administration ("TSA") and the City's security requirements for the Airport. Contractor shall cooperate with the TSA and the City on all security matters and shall promptly comply with any Project security arrangements established by City. Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Contractor's obligation with respect to all applicable state, federal and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at the Jobsite.



**6. Preventing Unauthorized Access.** The Airport has been secured to prevent unauthorized access to the Air Operations Area ("AOA"), the secured area, the sterile area and other controlled areas of the Airport. Contractor shall cooperate to the fullest extent with the TSA and DOA to maintain the integrity of the security system. The Contractor shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel and equipment in the AOA, the secured area, the sterile area and other controlled areas of the Airport as defined herein.

**7. Transportation Security Administration/Responsibility of Contractor.** In order to comply with the TSA and DOA security requirements, Contractor shall be responsible for informing itself as to current, ongoing, and changing requirements, and for remaining in compliance with those requirements throughout this Agreement. The security requirements are as follows and from time to time may change as required by the TSA and/or DOA.

**7.1 Security Identification Display Area (SIDA).** The Security Identification Display Area ("SIDA") is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Personnel associated with construction contracts in the AOA secured area or sterile area of the Airport shall display SIDA badges at all times. The TSA and the DOA require all personnel to display SIDA badges in areas controlled for security purposes at all times.

**7.2 FBI/CHRC Checks.** To obtain a SIDA badge, each individual must successfully undergo a Security Threat Assessment and a Federal Bureau of Investigation ("FBI") fingerprint based Criminal History Records Check ("CHRC") which must reveal no convictions of disqualifying crimes within the last ten years as defined in Transportation Security Regulation, TSR Part 1542.209. Each individual must also attend a security awareness course conducted by the DOA Security Division. Each employee must present two proper forms of identification and citizenship/employment eligibility documents if necessary. Contractor shall be responsible for all fees associated with obtaining a SIDA badge (i.e., badge and fingerprint fees as determined by DOA). The current cost for the CHRC is \$50.00 per individual. The current cost for badge is \$60.00 per individual. Cost for lost badges is \$60.00 for each replacement badge.

**7.2.1** In order to obtain up-to-date costs for the CHRC and for badging, Contractor shall contact the DOA Security office at (404) 530-6667 prior to sending individuals to the DOA Security office for badging. Contractor/Escorting Requirements are specified in subsection below.

**7.3 Displaying Badges.** Employees and those of all subcontractors must display a DOA issued badge showing Contractor's name and an employee number. All personnel shall be required to wear this badge at all times while within the secured areas of the Airport.

**7.4 Badging Records and Process.** Contractor shall maintain an up-to-date record of all badge holders showing name, address, sex, height, weight, color of eyes and badge number. Contractor will be required to furnish this information to the DOA upon request.

- 7.4.1** The Badging process may begin upon the Contractor's receipt of a formal Notice to Proceed (NTP) from the City and may take up to fourteen (14) calendar days to complete. Access to secured areas shall be denied until such time as the Contractor has completed the badging process.
- 7.4.2** If applicable, an Administrative NTP may be presented to the DOA Security Division by the Contractor in order to initiate the badging process for the Contractor's employees.
- 7.4.3** The Contractor shall appoint one of its employees as an Authorizing Agent and submit his or her name, on the Contractor's letterhead, to the DOA Security Division. The submittal letter shall indicate the Project Name, Agreement Number, Point of Contact, Telephone and Fax number, list of subcontractors including subcontractors' Authorizing Agent nature of the work to be performed by Contractor, and each subcontractor, location and duration, time frame(s), and justification for vehicle access, if required. A copy of the Contractor's Insurance Certificate shall accompany the letter. Once badged, the Contractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.
- 7.4.4** Each Subcontractor identified in the Contractor's letter shall appoint one of its employees as an Authorizing Agent and submit his or her name through the Contractor, to the DOA Security Division. A copy of the Subcontractor's Insurance certificate shall accompany the letter. Once badged, the Subcontractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.
- 7.4.5** Processing time for badging, at the badging office after completion of the CHRC, will last approximately one (1) hour. Processing time for Authorizing Agents will last an additional hour for briefing by the DOA Security Division. Authorizing agent briefing sessions will be conducted only on Mondays, Wednesdays and Fridays at 11 a.m. in the DOA Security office.
- 7.4.6** Each person applying for badging shall complete and submit all forms required by the DOA Security Division. All required forms will be provided to the authorizing agent at the time of the briefing at the DOA Security office.
- 7.4.7** Each person applying for a badge shall also submit to fingerprinting upon the submittal of said forms. Fingerprints will be utilized for a ten (10) year FBI-based criminal history records check for each individual employee.

**7.4.8** Pursuant to TSR § 1542.209 certain felony convictions within the most recent ten (10) year period, may cause disqualification. A list of disqualifying Felony convictions is available in the offices of the DOA Security Division and in the TSR Regulations.

**7.4.9** The Authorizing Agent will be notified when the results of the fingerprint checks are completed. Upon notification and approval, Contractor's and subcontractor's approved employees may return to the DOA Security Office, during posted hours, for photographing and badging. This process may take up to sixty (60) minutes.

**7.4.10** Badges issued to Contractor and subcontractor employees and agents shall expire upon the happening of one (1) of the following events, whichever occurs first:

**7.4.10.1** Completion of Agreement or subcontract, unless extended by the City;

**7.4.10.2** Expiration of Insurance coverage, as indicated on the Contractor's Insurance certificate;

**7.4.10.3** Employee's driver's license expiration date; or

**7.4.10.4** Two (2) years from the issuance of the badge.

**7.4.11** Contractor and its subcontractor shall be responsible for making arrangements, ahead of time, to extend badges, when necessary. A letter, directed to both the DOA Assistant General Manager (Facilities) and the DOA Security Manager, explaining the reason(s) for the badge extension on Contractor's letterhead will be required. Extension requests must be approved in writing by the DOA prior to extension of the badges.

**7.4.12** Contractor's questions concerning Airport Security shall be directed to (404) 530-6667.

**8. Drivers.** All drivers operating vehicles within the AOA must obtain, in addition to the DOA Security badge, a DOA Ramp Certification. Ramp Certification will be evidenced by a "D" sticker placed on the face of the badge by the DOA Security department.

**8.1 Ramp Certification.** City will require Airport Driver Safety Training and Ramp Certification for all personnel required to operate a motor vehicle in the AOA. This can be obtained by completing an Airport Driver Safety Training Course administered by the Airport Operations Division. Contractor shall contact the Airport Security Office at (404) 530-6667 during normal business hours to schedule the training session.

- 8.2 Except as set forth below, all vehicles operating within the AOA shall carry a minimum liability insurance coverage amount of TEN MILLION DOLLARS (\$10,000,000.00).
  - 8.3 Contractor shall mark all vehicles and construction equipment, including those of subcontractors, in a manner as required by the Department of Aviation and consistent with Transportation Security Regulations (TSR).
  - 8.4 All vehicles operating within the AOA must display permanent signage, legible and visible from a sight distance of five hundred (500) feet on both sides of the vehicle. MAGNETIC SIGNS ARE PROHIBITED FROM USE IN THE AOA.
9. **Protocols for Contractor Escorting.** Prime contractor must incorporate escorting protocol with Security Plan submitted for approval by the Security Manager. The Security Manager must approve any exceptions. Contractor must attach a map of work area(s) and routes to access the work area(s) to project security plan submitted to the Aviation Security Division for approval. Contractor may contact DOA Security Manager at (404) 530-6667 during normal operating hours.
- 9.1 All escorted vehicles and personnel must remain under the direction of authorized escorting personnel at all times.
  - 9.2 Contractor and escorted personnel shall have no Terminal or Concourse access.
  - 9.3 Escorting is limited to an Airport SIDA badged prime Contractor or an Airport SIDA badged escorting subcontractor approved by the Security and Operations Managers to perform escorting duties. The individuals involved in escorting shall perform no other services other than escorting while in service. No other subcontractors will be allowed to escort any vehicle(s).
  - 9.4 Escorting person(s) must have a SIDA badge.
  - 9.5 Designated badged prime Contractor employees approved or badged escorting subcontractor must escort prime Contractor employees and subcontractors' employees to all work sites. Once at the work site, badged employees, prime or subcontractors, may supervise unbadged employees, not to exceed five (5) employees per one (1) SIDA badged employee.
  - 9.6 All personnel (badged or escorted) must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the employee's name, Contractor's name and project number or name. All escorted personnel must remain under the control of person(s) with an Atlanta SIDA badge at all times while in the SIDA.
  - 9.7 Maximum vehicular escort—one (1) prime contractor vehicle or approved badged escorting subcontractor is permitted to escort two (2) subcontractor vehicles.

- 9.8 All vehicles requiring escort must access and egress the AOA through Pre-approved gates. Vehicles requiring escort shall not be permitted access or egress through any other entry or exit point within the AOA for any reason whatsoever.
- 9.9 All escorted vehicles must obtain a permit, valid for up to ten (10) hours, at Gate 73. The obtaining of a permit, however, shall not relieve a vehicle from the requirement of being escorted as set forth herein.
- 9.10 In the event an escorted vehicle requires a time limit extension, the vehicle, and its original operator, must return to Gate 73 to obtain a time limit extension to complete work in the AOA secure or sterile area. Time limit extension shall not exceed an additional ten (10) hour period under any circumstances.

## **10. Construction Contracts Within Sterile Area (Inside Terminal, Concourses)**

- 10.1 Highest level of Security required.
- 10.2 All employees of prime Contractor, and its subcontractors, must be badged to work in the sterile area.
- 10.3 If escorting of unbadged Contractors and or subcontractors is required, an approved sponsor agency (DOA, AATC, HACM, HCM, etc.) must perform escort full time.
- 10.4 For any work requiring access to the sterile area (beyond the Passenger Screening Checkpoint area and on Concourses), a tool inventory must be conducted daily by the prime Contractor or designated representative. A copy of this inventory should be provided to the construction manager or project manager for verification. In general, tools will not be allowed to pass through the checkpoint area.

**11. Restricted AOA Access.** Contractor shall allow passage into the AOA or secured area through its access point to persons, vehicles, and equipment displaying identification of the DOA or provide an escort for each person or vehicle not displaying proper identification. Escort vehicles must be insured as specified per Exhibit D; Insurance. Escorted vehicles need not carry the aforementioned coverage but must carry the minimum amounts of insurance required by Georgia Law. However, Insurance coverage of escort vehicles must provide coverage as specified by **EXHIBIT D** for vehicles being escorted.

**12. Visual Aids.** In the event of the possibility of contact with the AOA or secured area, Contractor shall establish a system of visual aids for marking and delineating the limits of required clearances adjacent to active runways, taxiways, and NAVAIDS during both day and night time work, subject to City's approval prior to the start of any work under this Agreement. The approved system of marking and delineating shall be installed, maintained and protected at all times.

**13. Tools and Materials.** Contractor shall create and maintain an inventory of all tools and materials utilized within the SIDA, terminal building, Federal Inspection Service (FIS), and AOA.

- 13.1** All tools and materials shall be stored and maintained in a secured manner to prevent unauthorized use, within pre-designated areas within the secured areas of the airport. Storage designations shall be obtained by the Contractor and/or subcontractor, prior to mobilization, by contacting the DOA Properties Division at (404) 209-2945. Change requests for storage designation may be approved only through the DOA Properties Division with notification and concurrence from the DOA Security Division. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.
- 13.2** All tools and materials must be secured to prevent unauthorized use at all times within the secured areas of the Airport and/or the AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.
- 13.3** Any and all job-specific or unusual tools and/or materials shall be presented to the security authority at point of entry gate when accessing and/or egressing the SIDA and/or AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.
- 13.4** All vehicles shall remain subject to search while within the secured areas of the Airport and/or the AOA at all times. Vehicles may also be searched prior to entry to the secured areas of the Airport. The possession of weapons and other prohibited items may result in criminal or civil charges in accordance with applicable laws.
- 14. Dumpsters.** Contractors and subcontractors shall be allowed no more than one (1) open dumpster per Agreement work area. Any and all other job-site dumpsters must remain securely covered and fastened at all times.
- 14.1** Trash must be removed daily.
- 14.2** No dumpster shall be permitted in the Terminal area for any reason whatsoever.
- 14.3** The Contractor shall be responsible for trash removal from dumpsters within the AOA. Contractor shall clear debris on a daily basis not later than the end of shift.
- 14.4** Dump trucks shall access and egress the AOA through pre-approved gates. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on projects within the secured areas of the Airport.
- 15. Terminal/Curbside.** A maximum of two (2) Contractor vehicles or two (2) subcontractor vehicles may be permitted in a work area at any given time, subject to the approval of the Atlanta Police Department and the DOA Security. In the event one (1) Contractor vehicle is

present, then no more than one (1) subcontractor vehicle may be present at the same time, and vice versa.

**15.1** Debris removal may be allowed from curbside with special permission by the DOA Security Department.

**15.2** When parked at curbside, at least one (1) badged employee must remain with the vehicle at all times. Vehicles must be removed as expeditiously as possible in all cases.

**15.3** Areas surrounding vehicles accessing curbsides must be kept clean at all times.

**15.4** For purposes of obtaining Terminal or Curbside access, the APD Airport Section shall be contacted by dialing (404) 530-6630 24 hours in advance of the desired access time.

**16. Staging Areas.** The Contractor's Construction staging area shall be identified on the plans.

**17. Federal Inspection Service Areas.** For any or all work conducted within Federal Inspection Service (FIS) areas, Contractor shall submit FIS Authorization requests to the **U.S. Customs Service (404) 765-2303**. The request shall detail the names of employees, description and area of work, work schedule, and any other relevant information to the DOA Security Department.

**17.1** Contractor shall be responsible for obtaining the appropriate approvals and special SIDA badge FIS access decals from the appropriate Federal authorities. Special SIDA badge FIS access decals will not be required in if one (1) or more U.S. Customs Agent(s) are present at the work site at all times.

**18. Security Checkpoints.** Contractor and subcontractors shall maintain awareness among all employees, and at all times, that all Security Checkpoints are now under Federal jurisdiction rather than privately contracted Security agents. In general, contractors will not be allowed to carry tools and construction materials through the passenger security screening points.

**18.1** Questions regarding Federal Security Checkpoints shall be directed to (404) 763-7437 or (404) 530-2150.

**19. Restrictions on Operations.** Contractor shall plan and conduct its operations so as not to enter upon lands in their natural state unless authorized by City. Contractor shall not damage, close or obstruct any utility installation, highway, road or other property until permits and City's permission therefore have been obtained. Contractor shall not disrupt or otherwise interfere with the operation of any pipeline, telephone, electric transmission line, ditch or structure unless specifically authorized by this Agreement. Contractor shall not damage or destroy cultivated and planted areas, or vegetation such as trees, plants, shrubs, and grass on or adjacent to the premises which, as determined by City, do not interfere with the performance of this Agreement. The City will be responsible for furnishing all rights-of-ways upon which the Work is to be constructed in advance of the Contractor's operation.

- 20. Cooperation with Agencies.** Contractor shall cooperate with the owner of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA), or a utility service of another government agency that may be authorized by the owner to construct, reconstruct or maintain such utility services or facilities during the progress of the Work. In addition, Contractor shall control its operations to prevent the unscheduled interruption of such utility services and facilities.
- 21. Location of Services.** The City does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the Work. Any inaccuracy or omission in such information shall not relieve Contractor of its responsibility to protect such existing features from damage or unscheduled interruption of service.
- 22. Notice to Owner/Operators.** Prior to commencing the work in the general vicinity of an existing utility service or facility, Contractor shall notify each owner/operator in writing of activities which might affect its interests. If, in Contractor's opinion, the owner/operator's assistance is needed to locate the utility service or facility or the presence of a representative of the owner/operator is desirable to observe the work, such advice should be included in the notification. Contractor shall furnish a copy of such written notices to City.
- 23. Excavation Methods.** Where the outside limits of an underground utility service have been located and staked on the ground, Contractor shall use excavation methods acceptable to City as may be required to insure protection from damage due to Contractor's operations.
- 24. Damage to Services.** Should Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, it shall immediately notify in writing the owner/operator, appropriate public safety authorities and City and shall take all reasonable measures to prevent further damage or interruption of service. Contractor in such events shall cooperate with the utility service of facility owner and City continuously until such damage has been repaired and service restored.
- 25. Failure to Protect Property.** Contractor shall not be entitled to any extension of time or compensation on account of Contractor's failure to protect all facilities, equipment, materials and other property as described herein. All costs in connection with any Improvements or restoration necessary or required by reason of unauthorized obstruction, damage or use shall be borne by Contractor.
- 26. Utility Contractor Licensing Requirements.** Contractor shall comply with the requirements of state law, including, but not limited to, O.C.G.A. § 43-14-8.2 (b)(1) which states that:

After June 30, 1994, no sole proprietorship, partnership, or corporation shall have the right to engage in the business of utility contracting unless such business holds a utility contractor license and there is regularly connected with such business a person or persons who holds a valid utility manager certificate issued under this chapter. Such utility manager must be actually engaged in the performance of such business on a full-time basis and oversee the utility contracting work of all



employees of the business. In cases where a sole proprietorship, partnership, or corporation has more than one permanent office, then each permanent office shall be registered with the division and at least one person who holds a valid utility manager certificate issued under this chapter shall be stationed in each office on a full-time basis and shall oversee the utility contracting work of all employees of that office.

## **Appendix A**

### **Office of Contract Compliance Requirements**



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6010 Fax: (404) 658-7359  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

OFFICE OF CONTRACT COMPLIANCE  
Hubert Owens  
Director  
[howens@atlantaga.gov](mailto:howens@atlantaga.gov)

TO: Adam L. Smith, Chief Procurement Officer  
Department of Procurement

FROM: Hubert Owens  
Mayor's Office of Contract Compliance

RE: **ACDBE Bid Documents for Project No.: FC-7500, Hair Salon-Barbershop Services**

DATE: August 28, 2014

---

The DBE bid documents with project specific availability for Project No.: FC-7500, Hair Salon-Barbershop Services enclosed. The entire OCC package, including both the standard and project specific ACDBE/EEO sections must be included in the bid documents. Please note that the enclosed package is solely for this project.

If there are questions, please contact me at (404) 330-6013, or Yvette H. Hawkins at (404) 330-6898.

cc: File  
Jaamal Jennings DOP



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6010 Fax: (404) 658-7359  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

OFFICE OF CONTRACT COMPLIANCE  
Hubert Owens  
Director  
[howens@atlantaga.gov](mailto:howens@atlantaga.gov)

August 28, 2014

**RE: ACDBE Bid Documents for Project No.: FC-7500, Hair Salon-Barbershop Services**

Dear Prospective City of Atlanta Bidder:

This packet is substantially different from all previous packets. The Office of Contract Compliance's **Airport Concessions Disadvantaged Business Enterprises (ACDBE)** information is an integral part of every Federally Funded City of Atlanta bid or proposal. Your efforts to assist the City of Atlanta in mitigating the present effects of past discrimination against disadvantaged business enterprises are essential. Please read all of the information very carefully. Pay close attention to the contract goals for this project and the ACDBE program reminders listed on page ACDBE 5.

Many businesses that appear in our register as certified M/FBEs or SBEs are not currently certified as **Disadvantaged Business Enterprises**. Certification of ACDBE firms is being handled by a different agency. Please see page ACDBE 2 for details of certification of ACDBEs. Thank you for your extra attention to the ACDBE program.

If you have any questions about the information included in this section of the solicitation please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

**The City of Atlanta looks forward to the opportunity to do business with your company.**

## TABLE OF CONTENTS

Policy Statement .....	1
Implementation of ACDBE Policy Contract Goals .....	2
Good Faith Efforts .....	3
Demonstration of Good Faith Efforts .....	3
ACDBE Contract Goals.....	4
Monitoring of ACDBE Policy .....	4
ACDBE Program Reminders.....	5
EEO Policy.....	6
Business Development Programs.....	6
COA Contract Compliance Certificate ACDBE Form 1 .....	7
ACDBE Subcontractor Contact – ACDBE Form 2 (pg 1 of 2) .....	8
ACDBE Subcontractor Contact – ACDBE Form 2 (pg 2 of 2) .....	9
ACDBE Project Subcontractor Project Plan ACDBE Form 3 .....	10
Letter of Intent to Utilize ACDBE Firm Form 4.....	11
First Source Jobs Program Policy Statement .....	12
First Source Jobs Information Form 5 .....	13
First Source Agreement Form 6.....	14
Components of a JV Agreement – Attachment 1 .....	15
DBE Mentor Protégé Initiatives – Attachment 2 (pg 1 of 2) .....	16
DBE Mentor Protégé Initiatives – Attachment 2 (pg 2 of 2) .....	17
Additional DBE Resources .....	18



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6010 Fax: (404) 658-7359  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

OFFICE OF CONTRACT COMPLIANCE  
Hubert Owens  
Director  
[howens@atlantaga.gov](mailto:howens@atlantaga.gov)

### CITY OF ATLANTA

#### AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE

#### POLICY STATEMENT

It is the policy of the City of Atlanta to ensure that ACDBEs, as defined in 49 CFR Parts 23 and 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Atlanta's policy:

1. To ensure non-discrimination in the award and administration of DOT assisted Opportunities;
2. To create a level playing field on which ACDBEs can compete fairly for DOT Assisted contracts;
3. To ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Parts 23 and 26 eligibility standards are permitted to participate as ACDBEs;
5. To help remove barriers to the participation of ACDBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the ACDBE program.

## **IMPLEMENTATION OF ACDBE POLICY CONTRACT GOALS**

The City of Atlanta establishes contract goals only on those contracts that have subcontracting and/or joint venture possibilities. The size of the contract goal is adopted on a project by project basis, impacted by the circumstances of each such contract (e.g. type and location of work, availability of ACDBEs to perform the particular type of work), in relation to the City's annual DBE goal.

The City of Atlanta expresses its contract goals as a percentage of the total amount of each particular DOT-assisted contract.

Each solicitation for which a contract goal has been established requires the bidders/offerors to submit the following information as part of their bid or offer:

1. The names, addresses and phone numbers of ACDBE firms that will participate in the contract;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm's participation;
4. Written and signed documentation of commitment to use a ACDBE subcontractor whose participation is submitted to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts to meet the goal.

The City of Atlanta has designated the Office of Contract Compliance as its DBE Liaison Office. The address of OCC is 55 Trinity Avenue, Ste. 1700, Atlanta, Georgia 30303. The phone number is (404) 330-6010.

Each contracting opportunity at the airport is individually evaluated and the individual contract goal is adjusted as appropriate in relation to the City's Annual DBE goal. The City of Atlanta will express its contract goal as a percentage of the total amount of each individual DOT-assisted contract.

## **GOOD FAITH EFFORTS**

The City of Atlanta treats bidder/offers' compliance with good faith effort requirements as a matter of responsiveness. Compliance of bidders with the ACDBE requirements, including good faith efforts, will be evaluated according to the standards of 49 CFR Parts 23 and 26.

## **DEMONSTRATION OF GOOD FAITH EFFORTS**

The obligation of the bidder/offers is to make good faith efforts to meet the goal. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting its good faith efforts. Examples of good faith efforts are found at 49 CFR Parts 23 and 26 Appendix A and are attached to this document.

OCC is responsible for determining whether a bidder/offers who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. In determining whether a bidder/offers is responsive to the ACDBE goals, OCC will consider whether the information submitted by that bidder/offers is complete, accurate and adequately documents the bidder's/offers's good faith efforts. Bidders who are informed that they have not met the "good faith efforts" requirements are entitled to administrative reconsideration of that determination, per 49 CFR 26.53(d).



## **AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS**

### **PROJECT No.: FC-7500, Hair Salon-Barbershop Services**

The Airport Concessions Disadvantaged Business Enterprise (ACDBE) contract goal for this project is:

**36.0%**

ACDBE participation may be in the form of a prime contractor, joint venture, or sub-contractor arrangement. The above referenced goal will be measured against **total gross revenue earned (prior to the deduction of any expenses, e.g., advertising, insurance, equipment, etc.)** throughout the life of the project.

**\*\*\*NOTE:** Once a successful proponent has been identified, OCC will work with that proponent to ensure that opportunities are maximized in the utilization of **certified ACDBE firms** during the construction build-out of the concession space(s), as well as any on-going supply opportunities. Participation in these areas must be contemplated independently, and not be included in the participation plan proponents submit in their efforts to meet the 36.0% goal stated above.

### **MONITORING OF ACDBE POLICY**

The City of Atlanta will require prime contractors to maintain records, documents, and receipts of gross revenue attributed to ACDBEs for three years following the performance of the contract. Those records must be made available for inspection upon request by any authorized representative of the City of Atlanta or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The City of Atlanta will keep a running tally of actual gross receipts attributed to the ACDBE firms from the time of the contract award.

The City of Atlanta's Office of Contract Compliance, or its designee, will perform interim audits of gross receipts and contract payments to ACDBEs if applicable. The audit will review payments to ACDBE subcontractors to ensure that the actual amount paid to ACDBE subcontractors equals or exceeds the dollar amounts stated in the schedule of ACDBE participation.

## **ACDBE PROGRAM REMINDERS**

1. ACDBE Plan. All proposals must contain a ACDBE Participation plan in accordance with the goals set forth above. The ACDBE plan must identify each ACDBE's name, address, and contact name, work description, and contract amount.
2. Subcontractor and Supplier Participation. On projects with subcontractor and supplier opportunities, disadvantaged business enterprise participation may only be met through certified businesses that meet the standards of 49 CFR Parts 23 and 26, Subparts D and E. Each prime contractor must meet the requirements of the ACDBE program.
3. Failure to Meet ACDBE Goals. Any bidder unable to meet the ACDBE goals must document the good faith efforts it made to meet the goals. Documentation must follow the requirements of the ACDBE plan pursuant to 49 CFR Parts 23 and 26 etc. If the City determines that good faith efforts were not made, the bidder is entitled to administrative reconsideration under 49 CFR 26.53.
4. Certification. As of March 1, 2004, the City no longer does DBE Certification. DBE Certifications are now handled by the GA Department of Transportation (GA DOT). The contact number for GA DOT is (404) 656-5267
5. Reporting. The successful bidder must submit monthly ACDBE participation reports to OCC, in a form prescribed by the Office of Contract Compliance.
6. ACDBE Concession Program. The ACDBE Concession Program is governed by the provisions of "49 CFR Parts 23 and 26".
7. Contract Assurance. The Concessionaire shall not discriminate on the basis of race, color, national origin, sex, religion, or sexual orientation in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Atlanta deems appropriate. Anti discrimination provisions based upon religion and sexual orientation are not included by or enforceable through 49 CFR Parts 23 and 26 but are enforceable through the City of Atlanta regulations.

## **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

**PROJECT No. : FC-7500, Hair Salon-Barbershop Services**

### **IMPLEMENTATION OF EEO POLICY**

The City effectuates its EEO policy by adopting racial and gender workforce goals for every contractor performing work for the City of Atlanta on federally funded projects. These goals are derived from the work force demographics set forth by the United States Department of Labor Federal Office of Contract Compliance. These goals are not included in or enforceable through 49 CFR Part 26.

#### **A FIRM 'S WORK FORCE CONSISTING OF LESS THAN TWENTY-FIVE (25) EMPLOYEES IS EXEMPT FROM THE FOLLOWING EEO REQUIREMENTS**

The Office of Federal Contract Compliance Programs (OFCCP) is the office of the United States Department of Labor that has responsibility for administration and enforcement of the Equal Employment Opportunity requirements under the contract compliance program which is authorized by Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Act of 1974. The programs mentioned above prohibit Federal contractors and sub-contractors from employment discrimination based on Race, Sex, National Origin, Religion, Sexual Orientation, and against persons with Disabilities or Vietnam Era Veterans, and requires such contractors to take affirmative action to ensure equal employment opportunity.

### **BUSINESS DEVELOPMENT PROGRAMS**

Though the ACDBE program primarily focuses on ACDBE participation at the subcontractor level, it is also important to provide ACDBEs with experience, training and skill development at the prime contractor level. The City of Atlanta encourages joint ventures between a prime contractor and an ACDBE, or a mentor protégé agreement between a prime contractor and a ACDBE whenever feasible on applicable contracts. The general description of the joint venture and mentor-protégé agreements is found on **Attachment 1 and Attachment 2** hereto and in the Atlanta Code of Ordinances.

## CITY OF ATLANTA CONTRACT COMPLIANCE CERTIFICATE

The undersigned has prepared and submitted all the documents attached hereto. The documents have been prepared with a full understanding of the City's goals and objectives with respect to increased opportunity in the proposed work to be undertaken in performance of this project. It is the company's intent to achieve the airport Concessions Disadvantaged Business Enterprise goals, the Equal Employment Opportunity goals, and the First Source Jobs Employment goals.

All information and representations contained herein and submitted with this bid or proposal are true and correct.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature  
Company Authorized Representative

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

FC Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

ACDBE FORM-1

## SUBCONTRACTOR CONTACT FORM

List all subcontractors or suppliers (Both ACDBE and Non-ACDBE Certified) that were contacted regarding this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE - Hispanic Business Enterprise, FBE - Female Business Enterprise. APABE - Asian (Pacific Islander) American Business Enterprise

\*\*\*Note: COA M/FBE certification does not count for DBE program goals. Firms must be certified by the GA DOT.

Company Name: \_\_\_\_\_ Project Name: \_\_\_\_\_ FC#: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*Note: COA M/FBE certification does not count for DBE program goals. Firms must be certified by the GA DOT.

# AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE SUBCONTRACTOR PROJECT PLAN

## SUBCONTRACTOR/SUPPLIER UTILIZATION

List all Majority and Airport Concessions Disadvantaged Business Enterprises (ACDBE) subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NIAC Code	Type of Work to be Performed	Ethnicity of ACDBE Ownership (see code below)	ACDBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Total      ACDBE%

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise,  
ABE - Asian (Pacific Islander) American Business Enterprise, (\*\*Note... EBO certification does not qualify for DBE projects)

Proponent's Co. Name: \_\_\_\_\_ Project Name: \_\_\_\_\_ FC#: \_\_\_\_\_

Proponent's Contact Number: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Please Print)

## LETTER OF INTENT

### *Airport Concessions Disadvantage Business Enterprise*

**Proponent**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ACDBE Firm:**

ACDBE Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**ACDBE Contact Person:** Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Expiration Date of ACDBE Certification: \_\_\_\_\_

**ACDBE is performing as:** ☐ Prime Concessionaire ☐ Sub concessionaire ☐ Joint Venture

Work item(s) to be performed by ACDBE	Description of Work Item	Quantity	Total

The proponent is committed to utilizing the above-named ACDBE firm for the work described above.  
The estimated participation is as follows:

ACDBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION:**

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
(Print name) (Title)

\_\_\_\_\_  
(signature) (date)

\* In the event the proponent does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.



## **FIRST SOURCE JOBS PROGRAM POLICY STATEMENT**

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact Deborah Lum of the Atlanta Workforce Development Agency at (404) 658-6312. This City of Atlanta program is not included in or enforceable through 49 CFR Parts 23 and 26.

**Michael Sterling, Interim Executive Director  
First Source Jobs Program  
Atlanta Workforce Development Agency  
818 Pollard Boulevard  
Atlanta, Georgia 30315  
(404) 546-3001**

## FIRST SOURCE JOBS INFORMATION FORM

Company Name: \_\_\_\_\_

FC Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

The following entry-level positions will become available as a result of the above referenced contract with the City of Atlanta:

1.

2.

3.

4.

5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: \_\_\_\_\_

Phone: \_\_\_\_\_

**FORM 5**

**THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by \_\_\_\_\_**

**This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.**

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

\_\_\_\_\_  
Contractor

## ATTACHMENT 1

### **“Components of a Joint Venture Agreement with ACDBE Participation as Counted under 49 CFR 26.55 (b)”**

For credit forward toward the contract goal under Part 26, a joint venture agreement with a certified disadvantaged business enterprise should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A description of the distinct and clearly defined portion of the work to be performed by the ACDBE.
- The method of and responsibility for accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

## **ATTACHMENT 2**

### **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MENTOR PROTÉGÉ INITIATIVES**

The mentor-protégé program is an initiative, in accordance with Appendix D to 49 CFR Part 26, to encourage and develop certified Disadvantaged Business Enterprises in contracting with city government in areas that Disadvantaged Business Enterprises have historically been underrepresented due to various discriminatory barriers. This program, implemented on projects with a projected value of 5 million dollars or more, will enable prime contractors of all ethnic and gender categories to provide technical, administrative, and other assistance to smaller, developing businesses. Companies must successfully complete the Disadvantaged Business Enterprise certification process in order to participate as a protégé in this program. Additionally, participation as a certified Disadvantaged Business Enterprise protégé team member will not preclude the inclusion of the same certified Disadvantaged Business Enterprise team member as a self-performing subcontractor in the DBE plan. The subcontracting by the certified Disadvantaged Business Enterprise protégé team member will be applied toward the satisfaction of the DBE goals in accordance with 49 CFR 26, Subpart C, 26.55.

Examples of good faith efforts are found in 49 CFR Parts 23 and 26, Appendix A that is attached to this package.

#### **“Components of a Mentor-Protégé Agreement with DBE Participation as Counted under 49 CFR 26.55”**

The Mentor-Protégé agreement between a prime contractor and the DBE protégé will provide an excellent development opportunity for the disadvantaged business enterprise protégé. Under the guidance of the mentor, the protégé will gain valuable knowledge and experience that will ultimately enhance the capabilities of the protégé. Additionally, the protégé has the opportunity to gain this knowledge and experience without exposing itself to the normal business risks that are associated with projects of this size.

As part of the City's Part 26 DBE program and subject to 49 CFR 26.35 and Appendix D, a mentor may meet up to half of the contract goal for this contract by using a DBE protégé as a self performing subcontractor through a formal mentor-protégé program. The successful prime for this project remains obligated to meet the entire contract goal for this project, including whatever portion of the goal that cannot be met by the protégé. Only independent DBE forms already certified by the City at this time (see “Certification”, page DBE 2) may participate as protégés.

The mentor may not (1) enter into a mentor-protégé agreement as a substitute for compliance with the DBE program, (2) use such an agreement to circumvent the obligations of the DBE program, (3) create a new firm to serve as a protégé (4) require a potential protégé to pay the mentor for the privilege of participating in the agreement, or (5) bar the protégé from performing work on this contract.

To meet the requirements of Part 26, the mentor-protégé team must present a written development plan and formal agreement between the parties to the City of Atlanta prior to executing the final contract.

The agreement should include, but is not limited to the following information:

- The type of collaboration, training and assistance to be provided. The areas of assistance encouraged include, but are not limited to, bonding and insurance support, management and scheduling support.
- The specific rights and responsibilities of the Mentor and the Protégé.
- Names or titles of the individuals from the Mentor responsible for working directly with the Protégé in the areas identified above.
- Names or titles of the individuals from the Protégé responsible for working directly with the Mentor in the areas listed above.
- The term of the agreement.
- A system to monitor and evaluate the effectiveness of the Mentor Protégé agreement.
- A plan detailing how the Mentor plans to include the Protégé on non-governmental projects, governmental projects, and DOT-assisted projects during the term of the agreement.
- Protege shall not subcontract any of their work to the mentor firm or to other contractors without the approval of the OCC. Subcontracted work will not be counted toward DBE goals except as specified by Part 26.
- Mentor and Protege representatives may not bid or otherwise participate independently on a contract in which the Mentor Protege team is bidding or participating as a team.
- Work self performed by the protégé may be used to fulfill up to one half of the DBE contract goal on this project.
- DBE credit will not be awarded to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé.
- Staff members from the Office of Contract Compliance will be available to review draft mentor-protégé agreements for compliance with this section.

## **Additional Resources Proponents May Contact in an Effort to Identify DBE Participants**

### **Atlanta Minority Business Development Center**

Clem Wilmont  
Project Director  
1599-A Memorial Drive, SE  
Suite 134  
Atlanta, GA 30317  
Phone: 404-329-4567  
E-mail: [cwilnot@AtlMBDC.com](mailto:cwilnot@AtlMBDC.com)

### **Atlanta Public Schools**

Carolyn Lyons  
Outreach Coordinator  
Contract Compliance  
1631 La France Street  
Atlanta, GA 30307  
Phone: 404-371-7130  
Fax: 404-371-7126  
Email: [clyons@atlanta.k12.ga.us](mailto:clyons@atlanta.k12.ga.us)

### **Cobb County**

Janice Cook  
Department of Transportation  
463 Commerce Park Drive, Suite 112  
Marietta, GA 30060-2737  
Phone: 770-528-3690  
Fax: 770-528-4360  
Email: [janice.cook@cobbcounty.org](mailto:janice.cook@cobbcounty.org)

### **Dekalb County**

Terry Phillips  
Contract Compliance Officer  
1300 Commerce Drive  
Room 202  
Decatur, GA 30030  
Phone: 404-371-2737  
Email: [tgphilli@co.dekalb.ga.us](mailto:tgphilli@co.dekalb.ga.us)

### **U.S. Small Business Administration**

Dinora Gonzalez  
Economic Development Specialist  
233 Peachtree Street, NE  
Suite 1900  
Atlanta, GA 30303  
Phone: 404-331-0100 ext. 410  
Email: [dinora.gonzalez-cook@sba.com](mailto:dinora.gonzalez-cook@sba.com)

### **Georgia Technology Authority**

Thomas Hester  
Contracting Officer  
100 Peachtree Street  
Suite 2300  
Atlanta, GA 30303  
Phone: 404-463-2339  
E-mail: [tdhester@gta.ga.gov](mailto:tdhester@gta.ga.gov)

### **Governor's Small Business Center**

Gail Webb  
Governmental and Outreach  
Community Administrator  
200 Piedmont Avenue  
1306 West Tower  
Atlanta, GA 30334  
Phone: 404-656-6315  
Toll-Free: 800-495-0053  
Email: [gsbc@doas.ga.gov](mailto:gsbc@doas.ga.gov)

### **Minority Business Development Agency**

Sunny Guider  
Chief Business Development  
401 West Peachtree Street, NW  
Suite 1715  
Atlanta, GA 30308-3516  
Phone: 404-730-3300  
Email: [sguider@mbda.gov](mailto:sguider@mbda.gov)

### **Gwinnett County**

Debra Green  
Purchasing Director  
75 Langley Drive  
Lawrenceville, GA 30045  
Phone: 770-822-8720  
Fax: 770-822-8735 or 770-822-8728  
Email: [greende@co.gwinnett.ga.us](mailto:green@co.gwinnett.ga.us)

**[END OF DOCUMENT]**



